

**223 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-A-1457-MA-2016  
Date of decision-14.02.2017**

**Chetan Kumar  
Vs.  
Bhawna**

**...Applicant-appellant  
...Respondent**

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. G.C.Shahpuri, Advocate for the applicant-appellant.

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**JITENDRA CHAUHAN, J. (Oral)**

This is an application under section 378(4) of the Code of Criminal Procedure for grant of leave to file appeal against the impugned judgment dated 07.06.2016, passed by Judicial Magistrate First Class, Yamuna Nagar at Jagadhari vide which the respondent was acquitted of offence under Section 138 of Negotiable Instruments Act.

It was the case of the complainant that he provided financial assistance of Rs.2,20,000/- to accused Bhawna in cash. In order to discharge her liability, the accused issued cheque bearing No.171797 dated 28.07.2013 for an amount of Rs.2,20,000/- in favour of the complainant. When the complainant presented the said cheque for encashment, the same was dishonoured on account of insufficient funds. The complainant served a legal notice dated 29.08.2013 upon the accused but the accused failed to make payment. Hence, the complaint.

The learned counsel contends that the trial Court acquitted the accused-respondents by holding that the legally recoverable debt and

liability were not proved, without appreciating the material facts on record.

It is further contended that there is no dispute with regard to signature of the accused on the alleged cheque. In this way, the appellant has proved all the material ingredients to constitute the offence under Section 138 of the Act against the respondent and the impugned judgment is liable to be set aside.

I have heard the learned counsel and carefully perused the entire record on file.

In this case, the appellant has failed to lead any cogent evidence which shows source of alleged amount qua transaction, wherein the same was advanced to the respondent. The appellant works in Eureka Forbes and earns Rs.25,000/- per month. Except self serving statement of the appellant there is no material evidence on record to prove the factum of legally enforceable debt of the accused towards appellant. Moreover, he has never put on record his bank account statement for the relevant period of the alleged loan advanced to the accused. There is no reference of the interest payable and the date of demand of loan in his complaint or in evidence.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is

shown conclusively that the inference of guilt is irresistible.

Keeping in view the above, the finding of acquittal recorded by the trial court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the respondent, this Court feels that learned Judicial Magistrate First Class, Yamuna Nagar at Jagadhari, has passed the impugned judgment dated 07.06.2016, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the leave to appeal is declined.

Dismissed.

**(JITENDRA CHAUHAN)**  
**JUDGE**

**February 14, 2017**

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| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |