

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

**CRM-A-1797-MA-2015  
Decided on : July 18, 2017**

**GURU NANAK DEV DENTAL COLLEGE AND RESEARCH  
INSTITUTE**

**....APPLICANT**

**VERSUS**

**DALBIR SINGH**

**....RESPONDENT**

**CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. M.K. Singla, Advocate for the applicant.

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**RAMENDRA JAIN, J (ORAL)**

The instant application under Section 378(4) read with Section 482 of Cr.P.C. has been filed to grant Special Leave to appeal against the judgment of acquittal dated 11.08.2015 passed in a complaint case No.25 dated 16.03.2012, under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the '1881 Act').

In nut shell, the applicant-complainant is running a Dental College and Research Institute. The son of the respondent, namely, Babneet Singh, took admission in Dental College of the applicant in B.D.S. Course in the year 2010 and deposited fee for the first year. For the remaining three years of the B.D.S. Course, the respondent issued post dated cheques to the applicant to discharge his liability of fee of his son- Babneet Singh. However, the son of the respondent-Babneet Singh left the course mid way.

The applicant-complainant presented cheque bearing No.966101 dated 01.07.2011 for Rs.1,50,000/- to the bank for encashment

towards the annual fee of IInd year of Babneet Singh. The same was returned unpaid with the remarks "Funds insufficient."

Consequently, the applicant-complainant got issued legal notice to the respondent and after completion of period filed complaint under Section 138 of the 1881 Act which, after due trial, was dismissed vide judgment dated 11.08.2015 by the trial Court.

Learned counsel for the petitioner contends that at the time of taking admission, Babneet Singh and his father-respondent had given undertaking/declaration that they shall obey all the terms and conditions regarding payment of fee and thus, they could not have been backed out from their undertaking. The trial Court failed to appreciate that the impugned cheque was towards fee of the Babneet Singh for IInd year of his B.D.S. Course and therefore ought not to have dismissed the complaint.

After giving my thoughtful consideration to the submissions made by learned counsel for the petitioner, I find the instant application completely devoid of any merit for the reasons to follow:-

- i) Every institution either educational or otherwise is governed by certain rules and regulations. The applicant is governed by the notification issued by Government of Punjab, Department of Medical Education and Research (Health III Branch) No.5/3/08-3HBIII/1934 dated 31.03.2008. In the said notification a procedure regarding conduct of PMET year 2008 onwards, fee structure etc. has been laid down. Note 3 of its clause 9 is re-produced as under:-

*"The fee will be payable on annual basis and the institutes shall not insist on the candidate to deposit fee of the entire course in advance. At the most candidates can be asked to furnish a surety*

*bond/bank guarantee that they will be liable to pay the balance fee for the whole course even if they leave the institute/course midway course.”*

From the above clause, it is unambiguously clear that the applicant could not have insisted the respondent to deposit fee of the entire course in advance. At the most, respondent, for the admission of his son, could be asked to submit a surety bond/bank guarantee that he would liable to pay the balance fee for whole of the course in case his ward leaves the applicant's institute/course mid way and in case there was a breach of the same by the respondent/applicant, it could file a suit for recovery by way of discharge of the surety bond/bank guarantee.

It is not disputed that the cheque in question was given by the respondent as a security to the applicant towards fee of his son for the II<sup>nd</sup> year of B.D.S. Course, which, in view of the above clause, could not have been taken by the applicant and if taken, the same can safely be termed as illegal, because the applicant cannot be permitted to wriggle out from its own terms and conditions laid down in the prospectus in view of the aforesaid notification dated 31.03.2008 issued by Government of Punjab, Department of Medical Education and Research (Health III Branch).

In view of the discussion above, the application is dismissed.

**July 18, 2017**

Rajneesh

**( RAMENDRA JAIN )  
JUDGE**

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