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

**CRM-A-1013-MA of 2016**
**Date of decision: 21st November, 2018**

Makhan Singh

…. Applicant

Versus

Kotak Mohindera Bank Ltd. Ludhiana and others

….Respondents

**CORAM : HON'BLE MR.JUSTICE T.P.S.MANN**
**HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present : Mr.K.B.Raheja, Advocate
for the applicant.

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**ARUN KUMAR TYAGI, J.**

Makhan Singh, the applicant-complainant, has filed the present application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of Special Leave to Appeal against judgment dated 02.03.2016, passed by learned Judicial Magistrate 1st Class, Abohar, in case titled as "Makhan Singh versus Kotak Mohindera Bank Ltd. and others", whereby the respondents-accused were acquitted of the charges under Sections 420, 467 and 471 of the Indian Penal Code, 1860 (for short 'the IPC').

Briefly stated, the facts giving rise to the filing of the present application are that applicant-complainant Makhan Singh, filed complaint against the respondents-accused regarding alleged commission of offences punishable under Sections 420, 467 and 471 of the IPC on the averments that in October, 2004, Dada Motors Limited, Abohar, Dealer of Tata Canter 207 DI gave newspaper advertisement offering gold coin weighing 20 gms. and discount of ₹10,000/- and availability of finance facility for purchase of Tata 207 vehicle. The applicant-complainant enquired about the scheme from respondent-accused No.3-Manu Sharma and agreed to purchase Tata 207 vehicle by depositing ₹10,000/- as advance money on 29.10.2004 and ₹40,000/- as margin money on 30.10.2004. Accused No.3-Manu Sharma obtained eight blank signed cheques as security from him for the purpose of insurance and finance. The vehicle purchased was insured from the National Insurance Company, Abohar and remaining amount was financed by accused No.1-Kotak Mohindera Bank. At the time of delivery of Tata 207 vehicle, the applicant-complainant demanded original Bill, Form 21, Form 22 and Temporary Registration Certificate but accused No.3-Manu Sharma did not give the same to him on the pretext that the same would come from Ludhiana and he will give the same later on. On repeated demands, Temporary Registration Certificate was given by accused No.3-Manu Sharma to the applicant-complainant. The applicant-complainant had been paying installments regularly upto January, 2005. On 23.02.2005, after the expiry of period of Temporary Registration Certificate, the applicant-complainant again demanded the documents but accused No.3-Manu Sharma alongwith other six employees forcibly took possession of the vehicle and told that an amount of ₹60,351/- is outstanding and the possession of the vehicle will be given on the payment of said amount. The applicant-complainant filed case against Dada Motors, Limited and his claim was allowed with ₹2,000/- as costs and ₹15,000/- as compensation and Dada Motors Ltd. was ordered to deliver the possession of the vehicle with original bill but accused No.3-Manu Sharma did not comply with the order for delivery of the vehicle and payment of costs and compensation and gold coin of 20 gms.

The applicant-complainant further averred that the applicant-complainant could not deposit the installments as the vehicle remained with the accused. With the intervention of respectables, namely, Harbhajan Singh, Manjit Singh and Parveen Kumar, a compromise was effected between the applicant-complainant and accused No.2-Nirmal Singh, D.R.A. and agreement dated 24.08.2005 was accordingly executed, whereby possession of the vehicle was taken by accused No.2-Nirmal Singh, D.R.A. and nothing remained due against the applicant-complainant. The applicant-complainant demanded his blank signed cheques but accused No.2-Nirmal Singh, D.R.A. replied that the same would be returned after bringing from Ludhiana. On 22.03.2006, accused No.1-Kotak Mohindera Bank misused the cheque by filling an amount of ₹50,361/- and presented the cheque in the bank account of the applicant-complainant, which was dishonored as the account was already closed. Thereafter, accused No.1-Kotak Mohindera Bank got Notice dated 18.04.2006 served upon the applicant-complainant. In August, 2006, when the applicant-complainant came to know that accused No.1-Kotak Mohindera Bank and accused No.2-Nirmal Singh, D.R.A. have come to accused No.3-Manu Sharma, the applicant-complainant alongwith Daler Singh and Nirmal Singh met the accused and demanded his cheques back but the accused refused to return the cheques stating that they have filed complaint under Section 138 of the Negotiable Instruments Act and if he issues receipt qua payment of ₹15,000/- awarded by the Consumer Forum then they will withdraw the case. The applicant-complainant reported the matter to the police but the police did not take any action on which he filed the complaint.

The preliminary evidence of the applicant-complainant was recorded. However, his complaint was dismissed by learned Judicial Magistrate 1st Class, Abohar, vide order dated 08.06.2011. The applicant-complainant filed revision petition against the above said order, which was allowed by learned Additional Sessions Judge, Fazilka. In view of the order of the Revisional Court, the accused were summoned to face trial under Sections 420, 467, 468, 471 and 120 B of the IPC, by learned Judicial Magistrate, 1st Class, Abohar, vide order dated 24.02.2014. Pre-charge evidence of the applicant-complainant was recorded and on finding prima facie case charges under

Sections 420, 467, 468, 471 and 120 B of IPC were framed against the accused. After recording post-charge evidence of the applicant-complainant, statements of the accused under Section 313 of the Cr.P.C. were recorded. In their statements under Section 313 Cr.P.C., the accused denied the commission of alleged offence. However, the accused did not produce any defence evidence.

The learned Judicial Magistrate 1st Class, Abohar, acquitted the accused vide impugned judgment dated 02.03.2016. Feeling aggrieved, the complainant has filed the present application for grant of special leave to appeal against the same.

We have heard learned counsel for the applicant-complainant and gone through the record.

Learned counsel for the applicant-complainant has while referring to the averments made in the complaint and evidence produced by the complainant, argued that learned Judicial Magistrate, 1st Class, Abohar failed to appreciate the submissions in right perspective and findings recorded by learned Judicial Magistrate, 1st Class, Abohar are perverse and acquittal of the respondents-accused has resulted in miscarriage of justice. Therefore, Special Leave to Appeal against the impugned judgment may be granted.

In the present case, the complainant purchased Tata 207 vehicle from Dada Motors Ltd. through accused No.3-Manu Sharma by availing finance facility from accused No.1-Kotak

Mohindera Bank through accused No.2-Nirmal Singh, D.R.A. As per his own claim, the applicant-complainant had given 8 blank signed cheques to accused No.3-Manu Sharma for insurance and also for due payment of finance facility availed by him from accused No.1-Kotak Mohindera Bank through accused No.2-Nirmal Singh, D.R.A. The cheques were, therefore, meant to be handed over for use by accused No.1-Kotak Mohindera Bank for encashment in case of default in payment of the installments. If a person submits blank signed cheques for due repayment of loan, he impliedly authorizes the drawee to fill in the blanks and in such a case, filling of the blanks by the drawee does not amount to forgery of such cheque or involve cheating of the drawer. Reference in this regard may be made to **Suryalakshmi Cotton Mills Limited Vs. Rajvir Industries Limited and others 2008(1) R.C.R. (Criminal) 652 (SC), Tarlochan Singh Vs. State of Punjab 2010 (2) R.C.R. (Criminal) 410 (Punjab and Haryana High Court) and LillyKutty versus Lawrance, 2003 (4) R.C.R. (Criminal) 805 (Kerala High Court).** In the present case in the very nature of things, there was an implied authorization by the applicant-complainant of accused No.1-Kotak Mohindera Bank for filling up the cheques by accused No.1-Kotak Mohindera Bank for defaulted amount.

No doubt, accused No.1-Kotak Mohindera Bank through accused No.2-Nirmal Singh, D.R.A. compromised the matter with the applicant-complainant, vide Agreement dated

24.08.2005 and agreed that on transfer of the vehicle to accused No.1-Kotak Mohindera Bank, nothing was due against the applicant-complainant but admittedly, the applicant-complainant did not get 'No dues Certificate' issued with the consequence that the loan account continued. As per the Statement of Account, amount of ₹50,361.00 was outstanding against the applicant-complainant.

Accused No.1-Kotak Mohindera Bank presented the cheque by filling an amount of ₹50,361.10 in the account of applicant-complainant which was dishonoured with the remarks 'the account has been closed'. Even though service of Notice by accused No.1-Kotak Mohindera Bank on the applicant-complainant on dishonor of cheque is not strictly proved, as Kanmaljit Sharma, Advocate, who is alleged to have issued the notice, when examined as CW-6, denied his signatures on the same but the question as to proof of notice pales into insignificance as there is nothing on record to show that accused No.1-Kotak Mohindera Bank filed any complaint under Section 138 of the Negotiable Instruments Act against the applicant-complainant. Mere presentation of cheque by accused No.1-Kotak Mohindera Bank with the Banker of the applicant-complainant for its encashment towards outstanding dues in ordinary course of business at best amounted to breach of agreement entitling the applicant-complainant to exercise of civil remedies but the same did not satisfy the ingredients of the offences of cheating and forgery so as to attract criminal liability qua accused no.1- Kotak Mohindera Bank. There is nothing on record to show that accused No.2-Nirmal Singh, D.R.A. filled the cheque in question and presented the same for its encashment or that he is the person appointed by accused No.1-Kotak Mohindera Bank as its representative, in accordance with Section 305 of the Cr.P.C. for the purpose of enquiry or trial. Therefore, the respondent-accused No.2-Nirmal Singh, D.R.A. could not be visited with criminal liability for the same.

Since blank signed cheques submitted by the applicant-complainant to accused No.3-Manu Sharma were meant to be handed over to accused No.1-Kotak Mohindera Bank, accused No.3-Manu Sharma cannot be said to have committed any offence by handing over the same to accused No.1-Kotak Mohindera Bank. Kotak Mohindera Bank and Dada Motors Ltd. are separate entities. Therefore, accused No.3-Manu Sharma cannot be subjected to any criminal liability for the act of filling the blank signed cheque and presenting the same for encashment by accused No.1-Kotak Mohindera Bank. Learned Judicial Magistrate, 1st Class, Abohar noticed that Dada Motors had filed Civil Suit for recovery against the applicant-complainant, which was, on failure of the applicant-complainant to appear and contest the same, decreed ex-parte. Inter-se rights and liabilities of the applicant-complainant and Dada Motors Ltd. would be subject to exercise of civil remedies. It appears that the present complaint has been filed to exert pressure on accused No.3-Manu Sharma, for making settlement favourable to the applicant-complainant.

The application fails to make out any arguable case is dismissed being devoid of any merit and Special Leave to Appeal is declined.

**(T.P.S.MANN)**
**JUDGE**

**(ARUN KUMAR TYAGI)**
**JUDGE**

**November 21, 2018**
kvs

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