

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

**CRM-A No. 530-MA of 2015 (O&M)
Date of Decision: May 14, 2018**

Hakkam Singh

.....APPLICANT (s).

VERSUS

Harbhajan Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Deepak Nayyar, Advocate
for the applicant.

SURINDER GUPTA, J.

This is application for grant of leave to appeal against dismissal of the complaint under Section 138 of Negotiable Instruments Act filed by the appellant. As per case of the applicant, respondent had issued a cheque bearing No. 747184 dated 31.07.2008 drawn on Indian Overseas Bank, Zirakpur Branch for a sum of ₹5 lakh, which on presentation was dishonoured for want of sufficient funds.

The complaint was dismissed by the trial Court on following grounds:

- (i) The cheque was issued from the account of Shivalik Vihar Private Limited, but no complaint has been filed against that company and the prosecution of Director of that company without arraying the company as an accused is bad in the eyes of law.
- (ii) Notice issued to the accused was not signed by the complainant.
- (iii) As per allegations of the complainant, the cheque was issued

against the price of sale of land by the complainant to accused but no evidence in this regard was placed on file. Rather, the complainant admitted that he had not sold the land to accused but had given him an attorney to sell the land to third person. Even the power of attorney given by the complainant was not proved on file.

(iv) The trial Court also concluded that the claim of complainant qua the alleged outstanding amount was time barred and cheque was issued for time barred debt, as such, no offence under Section 138 of N.I.Act is made out, if the cheque got dishonoured.

(v) It was proved that accused had resigned from Shivalik Vihar Private Limited on 14.08.2006 and the cheque was allegedly issued 31.07.2008 on behalf of Shivalik Vihar Private Limited.

Learned counsel for the applicant has fairly admitted during the course of arguments that the cheque was issued on behalf of Shivalik Vihar Private Limited, which was neither arrayed as accused nor any notice was issued to it before filing the complaint.

In view of above admission of learned counsel for the applicant, liability of the respondent, in the absence of Shivalik Vihar Private Limited being arrayed as party, is not made out and I find no reason to interfere with the findings of learned Magistrate on this score.

Consequently, I find no merits in this application, so as to allow permission to the applicant under Section 378 (4) Cr.P.C. to file the appeal, as such, this application for grant of leave to appeal is dismissed.

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There is delay of 104 days in filing the application for grant of

leave to appeal. As the application for grant of leave to appeal has been decided on merits and the matter seeking condonation of delay in filing appeal is only of academic interest. Keeping the reason, given in application in view, the delay in filing the application for grant of leave to appeal is condoned and the application is allowed.

May 14, 2018
Jyoti-II

(SURINDER GUPTA)
JUDGE

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