

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-670 of 2018

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Date of decision:11.12.2018

Gajraj Singh

...Appellant

v.

Deepak

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Ms. Supriya Garg, Advocate for the appellant.

Mr. Vikram Singh, Advocate for Mr. Varun Gupta, Advocate for the respondent.

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**Inderjit Singh, J.**

This appeal has arisen out of the acceptance of Criminal Misc. No.A-1863-MA of 2015 granting leave to file appeal vide order passed today by this Court.

Learned counsel for the parties agree that the appeal may be heard today itself. I have heard learned counsel for the parties in the appeal.

This criminal appeal has been filed against the impugned order dated 24.8.2015 passed by learned Judicial Magistrate Ist Class, Narnaul, vide which the complaint filed by Gajraj Singh against Deepak under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused has been acquitted of the notice of accusation.

The accused has filed application by taking the plea that he never took any loan from the complainant and his actual date of birth is

5.4.1992 while account in HDFC Bank, Narnaul was opened for him by his mother and she used to operate the same. It has also been pleaded that on 6.4.2010, he was a minor, hence, legally he could not conduct monetary transaction with the complainant. The complainant cheated the accused by saying that he would get accused employed somewhere and took two cheques on 1.9.2009 as guarantee and said cheques were to be returned back to him subsequently. It has been stated that the accused was minor and hence, he cannot be held as liable under Section 138 of the NI Act.

The application was contested by the complainant who stated that as per the copy of the birth certificate, the applicant-accused was not minor. The applicant-accused relied upon documents Mark-PA to Mark-PI which include his school certificate, PAN card, passbook of Canara Bank, identity card of National Institute of Open Schooling. He also relied upon DL of the accused wherein date of birth of accused has been recorded to be 5.4.1992.

On the other hand, the complainant relied upon the certificate issued by Registrar, Birth and Death, wherein no son was born to Giriraj Sharma and Gita Devi in 1991-1992 and the date of birth stated by the accused in the application is wrong.

The learned Judicial Magistrate Ist Class, Narnaul, on the basis of these averments held that the accused was a minor and relying upon the law in Anagha Prasad v. M.C. Abu, 2014(4) R.C.R. (Civil) 682, acquitted the accused.

In this case, notice of motion was issued and the learned counsel for the respondent has put in appearance and contested this appeal.

I have heard learned counsel for the parties and have gone through the record.

From the perusal of the record, it is clear that the learned trial Court has given the findings of fact regarding date of birth of the accused-applicant. The documents were not proved as per law and no opportunity has been given to the parties to produce the evidence. Rather, on the basis of documents which were placed on record and marked documents, the findings of fact have been given by the learned trial Court which are not as per law. Therefore, the impugned order which is based on inadmissible evidence and has been passed without giving opportunity to the parties is illegal and the same is liable to be set aside.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Narnaul, allowing the application of the accused-applicant is set aside. The case is remanded back to the learned trial Court to proceed further as per law after giving opportunities to the parties to produce evidence in their favour.

The parties are directed to appear before the trial Court on 22.1.2019.

December 11, 2018.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

**NOTE:** Whether speaking/reasoned: Yes

Whether reportable: No