**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 445 of 2019**

Order Reserved on : 18/07/2019

Order Delivered on : 09/08/2019

- Cholamandalam Investment and Finance Company Limited, Branch Office, Rishabh Tower, Beside City Heart Restaurant, Near New Bus Stand, G.E. Road, Rajnandgaon (C.G.) Through : Mahendra Kumar Sahu S/o M.R. Sahu, aged about 39 years

**----Petitioner**

**Versus**

- Resham Lal Gayakwad, House No. 107, Ward No. 11, Birejhar, P.O. Dhumka, Tehsil & District Rajnandgaon

**---- Respondent**

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For Petitioner : Shri Swayam Tehangaria, Adv.
For Respondent : Shri Purnendra Khichariya, Adv.

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**Hon'ble Smt. Justice Rajani Dubey**

**C A V Order**

**09/08/2019**

01. Present revision is directed against the impugned order dated 18.01.2019 passed in Cr.A.No.30/2018 by learned 1st Additional Sessions Judge, Rajnandgaon confirming the order dated 24.03.2018 passed by learned Judicial Magistrate First Class, Rajnandgaon, in Criminal Case No.2201/2016, whereby the learned Judicial Magistrate stopped the proceeding against respondent under Section 258 Cr.P.C. and discharged him of the offence under Section 138 of the Negotiable Instrument

Act, (for short 'the N.I. Act').

02. Brief facts of the case are that on 18.04.2015 the respondent took loan of Rs.4,94,000/- from the applicant, which is finance company, for purchasing Tractor bearing registration No.CG-08-W-5236, vide contract No. XTRARGN-00001398103. Respondent also issued a cheque No.445424 on 27.05.2016 for Rs.5,47,624/- drawn on Bank of Baroda, Rajnandgaon, towards outstanding dues of finance, which was returned unpaid on account of insufficient fund and demand notice was issued to respondent and complaint was filed before the Judicial Magistrate First Class, Rajnandgaon. The applicant repossessed the vehicle of Rs.6,50,000/- against loan amount of Rs.4,94,000/-, meaning thereby the margin money of Rs.1,56,000/- was paid by respondent for purchasing the Tractor, and out of loan amount, Rs.84,000/- was also paid by the respondent. The repossessed vehicle was sold by the applicant for Rs.3,40,000/-. Thus, the applicant has received total sum of Rs.5,80,000/- against loan amount of Rs.4,94,000/- and the loan account of respondent was foreclosed on 30.06.2016 by waiving rest of the interest. Thereafter, on 15.07.2016, a separate demand note of Rs.2,09,045/- was issued by the applicant against respondent, which was dismissed on the ground that the applicant has already received more amount than that of the loan amount, the loan account of respondent has been foreclosed and acquitted the respondent of the charge under Section 138 of

the N.I. Act. The order of the learned Magistrate has been confirmed by the 1st Additional Sessions Judge. Hence, this revision.

03. Learned counsel for the applicant submits that the impugned judgment and sentence passed by the learned Courts below are bad in law. He further submits that the trial Court erroneously interpreted record submitted by the applicant. The statement of account shows that the principal outstanding, on the date of termination of account, was Rs.4,34,312/- and the trial Court has held it to be satisfactory and erred in acquitting the accused/respondent.

04. Learned counsel for respondent supports the impugned judgment of trial Courts.

05. The ground of filing of revision is that the margin money is always paid to the dealer of vehicle and not to the finance company. The learned trial Court calculated the margin money of Rs.1,56,000/- and added it to the loan account. Prima-facie, this order of the learned trial Courts, appears to be not in accordance with law because the margin money is always paid to the dealer of vehicle and not to the finance company.

06. Hence, for the reasons stated herein above, this Court quashes and set aside the impugned order dated 18.01.2019 and 24.03.2018. The case is remanded back to the trial Court with direction to afford opportunity to both the parties and then to decide afresh the case in accordance with law.

07. Both the parties to remain present before the trial Court on 02.09.2019.

Sd/-

**(Rajani Dubey)**
**JUDGE**

Vijay