

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

**CRR No. 3582 of 2015  
DATE OF DECISION :- February 17, 2020**

**Shashi Kala**

**...Petitioner**

**Versus**

**Jagtar Singh**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE H.S. MADAN**

**Present:-** Mr. B.S. Bali, Advocate for the petitioner.

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A complaint under Section 138 of the Negotiable Instruments Act had been filed by complainant Shashi Kala against accused Jagtar Singh, proprietor M/s Kataria Karyana Store, Ludhana.

As per version of the complainant, the accused has been in possession of shop belonging to her as a tenant on monthly rent of Rs.700/-. Since the accused was in arrears of rent in order to discharge his legal liability, he had issued a cheque dated 25.5.2012 for Rs.49,000/- drawn on Central Bank of India, Salem Tabri, Ludhiana. On presentation of the cheque for encashment through PNB, Salem Tabri, Ludhiana, the cheque was returned unpaid by the banker of the accused vide memo dated 31.5.2013 on account of insufficiency of funds in the account of the accused. On coming to know about this, the complainant served a legal notice dated 14.8.2012 upon the accused calling upon him to make payment of the cheque amount within 15 days of the receipt of notice, but the

accused failed to do so, as such the complainant brought the complaint in question.

After recording of the preliminary evidence the accused was summoned, who put in appearance and was admitted to bail. Notice of accusation was served upon him to which he pleaded guilty and did not claim trial.

Vide judgment dated 31.7.2013, the Judicial Magistrate First Class, Ludhiana held the accused guilty and convicted him. However, considering the circumstances explained by him he was ordered to be released on probation for a period of one year. He was ordered to pay compensation amount of Rs.49,000/- to the complainant equivalent to the cheque amount.

The complainant felt aggrieved by the said judgment and had preferred an appeal before the Court of Sessions at Ludhiana. That appeal was assigned to Additional Sessions Judge, Ludhiana, who vide judgment dated 14.7.2015 accepted it partly and enhanced the compensation amount to Rs.15,000/-, however, declined to interfere with the order passed by the trial Magistrate rendering benefit of probation to the respondent.

The complainant still felt dissatisfied and has approached this Court by way of filing a revision petition, notice of which was given to the respondent, who had initially put in appearance. For today there is no representation on behalf of the respondent.

I have heard learned counsel for the petitioner complainant besides going through the record.

A perusal of the judgment passed by the Courts below goes to

how that benefit of probation was granted to the accused without calling report from Probation Officer which is mandatory in terms of judgment M.C.D versus State of Delhi and another 2005(3) R.C.R. (Criminal) 13 by the Apex Court. Therefore, the judgments passed by the Courts below cannot stand judicial scrutiny on that point. Therefore, those are set aside to the extent of grant of benefit of probation to the accused and case is remanded to Judicial Magistrate First Class, Ludhiana with a direction to hear the parties again on the point of quantum of sentence and call for report from Probation Officer and then pass order in that regard. Since there is no representation on behalf of the respondent accused, the trial Magistrate shall get his service effected and thereafter proceed further in terms of the directions issued vide this judgment. The complainant through counsel is directed to appear there on 6.3.2020.

Lower Court record be returned to the Court of learned Magistrate through District and Sessions Judge concerned, if it has been requisitioned and is presently lying in this Court.

**(H.S. MADAAN)**  
**JUDGE**

**February 17, 2020**  
*p.singh*

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No