

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-A-63 of 2021 (O&M)
DECIDED ON:31st May, 2022**

Smt. Sunita Devi

.....Applicant/Appellant

VERSUS

Harinder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Lupil Gupta, Advocate for applicant-appellant.

AVNEESH JHINGAN, J (ORAL)

This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against the acquittal of Harinder Singh in complaint Case No.COMA-723-2016 under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

As per the case set up by the complainant, the respondent was engaged in share broker business in the name and style of "*Two Sparrow*". Investment was made through him, on his assurance to give maximum profit. In discharge of liability a cheque was issued, on presentation the cheque was returned with remarks "*funds insufficient*". After serving a legal notice, the complaint was filed.

The accused took a defence that there was no legally enforceable debt or liability. The complainant had misused the cheque taken from the trading office. There was tampering on the cheque as word 'fifty' was not legible.

The trial Court considered that the complainant had not mentioned the amount of money invested and the date of investment, either in the complaint or in the affidavit. During cross examination, the complainant faltered when asked for as to how the amount invested was available with her. She replied that the money belonged to her and to the public. Trial Court further noted that word 'fifty' was not legible on the cheque. Accused was

acquitted.

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Learned counsel for the applicant submits that the trial Court erred in acquitting the accused as neither the signature on the cheque nor the fact that the cheque was returned due to "insufficient funds" was disputed.

The complainant had not even pleaded in the complaint or in the affidavit that the cheque was issued in discharge of liability or debt. She could not withstand the cross-examination and faltered. The defence taken by the respondent of misuse of cheque picked from a trading office was substantiated by the fact that there was tampering with the cheque as word 'fifty' was not legible. The defence taken was probable, in absence of discharge of onus by complainant, no case is made out of any legal or factual error. The conclusion arrived at by the trial Court being plausible conclusion, no interference is called for.

The application for leave to file appeal is dismissed.

Since the main case has been decided, the pending application, if any is rendered infructuous.

31st May, 2022

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*