

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1778-MA-2015 (O&M)

Decided on 07.03.2025

Damanvir Singh ... Applicant

VS.

Hitesh Gandhi ... Respondent

CRM-A-1803-MA-2015

Damanvir Singh ... Applicant

VS.

Hitesh Gandhi ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumit Jain, Advocate and
Mr. Dushyant Rana, Advocate for the applicant

Sandeep Moudgil, J.

(1). This order shall dispose of the above cited two applications which are identical and interconnected. For the sake of order, CRM-A-1778-MA-2015 is treated as the lead case.

(2). This application has been filed by the applicant-complainant under Section 378(4) CrPC for grant of leave to file appeal against the judgment dated 03.08.2015 passed by JMIC, Jalandhar vide which accused-respondent has been acquitted in a complaint case No.30068 of 2013 "Damanvir Singh vs. Hitesh Gandhi" under Section 138 of Negotiable Instruments Act, 1881 (in short, the NI Act).

(3). Learned counsel for the applicant/complainant submits that he had sold 2915607 share of Grand Multiplex Projects Ltd. Jalandhar to the accused-respondent by way of transfer in the name of the accused/respondent and his father, namely, Prem Pal Gandhi and in lieu thereof, they paid Rs.2 crores through cheque and for the balance amount of Rs.1.25 crores, they issued five

cheques of Rs.25 lakhs each in discharge of their financial debt liability, however, the said cheques including the one which is subject matter of present application bearing No.052472 dated 19.09.2010, on its presentation in the Bank, was returned due to insufficient fund. He contends that the very ground of “insufficient funds” for dishonouring of cheque itself shows that the plea of the respondent that the cheques were issued not in discharge of legally enforceable liability, is based on falsity inasmuch as, had it not been the case, the ground for dishonor of cheques would have been other than “insufficient funds”.

(4). It is argued that the trial court failed to take into consideration the fact that the respondent has not denied his signature on the cheque(s) and as such, its execution by the respondent stands admitted and proved and therefore, the ingredients of Section 138 of NI Act are fulfilled. He then placed reliance on letter dated 18.06.2010 (Annexure A1) submitted by the respondent to the Board of Directors of the complainant’s firm wherein it has been specifically mentioned that he is getting transferred 585607 equity shares in his favour and towards the consideration of these shares, he issued 16 cheques out of which 5 cheques were issued in the name of the applicant/complainant and subsequent thereto, the company of the complainant transferred the above mentioned shares in the name of the respondent and his father vide share capital certificates (Annexure A2 colly).

(5). Learned counsel then averred that the trial court erred in not appreciating the fact that the applicant/complainant had never objected to the transfer of the share in the name of the respondent and moreover, the respondent failed to examine the Registrar of Companies regarding the transfer

of the shares and as such, the respondent ought to have proved through evidence of ROC that the applicant/complainant had stopped the transfer of the share in the name of the respondent.

(6). Heard learned counsel for the applicant.

(7). A perusal of the judgment passed by the trial court would show that cheque No. 052472 was issued by the respondent in favour of the applicant/complainant in consideration of 2915607 shares being sold to him by the applicant/complainant, however, since the said cheque Ex.C1 was dishonoured with remarks "Insufficient Funds", the present proceedings were initiated at the instance of the applicant/complainant.

(8). Before the trial court the applicant/complainant proved the execution of cheque by the respondent attracting the provisions of Section 139 of the Negotiable Instrument Act which provides for presumption of debt or liability against the respondent. It has also come on record that the respondent took a plea that the said cheque Ex.C1 was given under Memorandum of Understanding Ex.DA/1 dated 18.06.2010, which was executed *inter se* the applicant and respondent and his father. A specific plea was taken before the trial court, which has been reiterated in the reply to the legal notice as well, that since the applicant/complainant failed to fulfill the terms of memorandum and presented the said cheque without informing the respondent, no legally enforceable debt liability can be fastened upon the respondent, for, the burden is upon the applicant/complainant to prove that the shares were actually transferred in the name of the beneficiary in lieu of which payment in the shape of cheque(s) has been issued.

(9). The trial court rightly came to the conclusion that there existed no legal liability at the time when the cheque was issued and since the applicant/complainant has failed to fulfill his part of obligation regarding which the parties executed a memorandum of understanding, as such, the presumption under Section 139 of NI Act stood successfully rebutted by the respondent. It all the more becomes evident by the fact that the applicant/complainant has deliberately failed to file the share transfer certificate to show that the transfer of shares has been actually effected in the name of the respondent.

(10). A mere presentation of delivery of cheque by accused would not amount to acceptance of any debt or liability. Complainant has to show that cheque was issued for any existing debt or liability. If the complainant did not transfer shares as agreed vide MOU between the parties and the cheque which was issued conditionally on fulfillment of obligation on the part of the applicant/complainant, stands dishonoured, the cheque bounce case may not be valid under Section 138 of NI Act, as the cheque cannot be considered to have been issued for the discharge of a legally enforceable debt or liability. Therefore, this Court does not find any legal infirmity or illegality in the judgment passed by the trial court.

(11). Dismissed.

07.03.2025

V.Vishal

1. *Whether speaking/reasoned?*

2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No

Yes/No