



CRA-S-450-SB-2012

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

CRA-S-450-SB-2012

Reserved on : 01.05.2025

Date of Pronouncement : 29.05.2025

M/s Samra Leasing Ltd.

... Appellant

Versus

Bakshish Masih

.. Respondent

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

Present:- Mr. K.S. Dhillon, Advocate for the appellant.

Mr. K.P.S. Virk, Advocate (*Amicus Curiae*)  
for the respondent.

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**H.S. Grewal, J.**

This appeal is directed against the judgment passed by the learned Sessions Judge, Jalandhar on 11.05.2009 vide which the order convicting the respondent/accused passed by the Judicial Magistrate 1<sup>st</sup> Class, Jalandhar had been set aside and the respondent had been acquitted in a complaint case registered under Section 138 of the Negotiable Instrument Act, 1981 (hereinafter referred as 'NI Act').

2. Learned counsel for the appellant/Company submits that the respondent/accused had entered into a hire purchase agreement with the complainant/appellant for purchase of auto bearing name Vikram(d) 750 A/R and to discharge his liabilities towards the installment, he had issued a cheque bearing No.'909501' dated 22.06.2004 for a sum of Rs.1,32,000/- drawn on



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Punjab National Bank, Hoshiarpur but the said cheque was dishonoured due to insufficient funds. The appellant/Company had, firstly, served him a legal notice dated 09.07.2004 and thereafter, preferred the aforesaid complaint under Section 138 of NI Act before the Judicial Magistrate 1<sup>st</sup> Class, Jalandhar. The trial Court vide judgment and order of sentence dated 02.08.2008, had convicted the respondent for a period of one year, to pay a fine of Rs.5,000/- and in default thereof, to undergo further imprisonment for one month. In an appeal thereagainst, the lower Appellate Court, without adequately dealing with the reasoning given by the trial Court, had erred in acquitting the respondent/accused vide the impugned judgment dated 11.05.2009.

3. On the other hand, learned *Amicus Curiae*, appearing for the respondent submitted that the lower Appellate Court has rightly discharged the respondent for an offence under Section 138 of the NI Act because the appellant/complainant had failed to establish its case. He further submitted that the appellant/Company had misused the blank cheque on the pretext of hire purchase agreement because the appellant/Company failed to bring on record the exact date of purchase of the auto, the outstanding installments, or the sale amount of the vehicle. The respondent had categorically stated in his defence that he did not issue any cheque against a legally enforceable debt and had even produced receipts for a portion of the loan repayment (Ex.R1 to R9, amounting to Rs. 42,672/-).

4. I have taken into account the submissions of the learned counsel for the parties and perused the material available on record.



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5. It is the case of the prosecution that the respondent had issued a cheque bearing No.'909501' dated 22.06.2004 for a sum of Rs.1,32,000/- drawn on Punjab National Bank, to the appellant/complainant in order to repay the liability but on its presentation, it was dishonoured due to insufficient funds vide its memo Ex.C3.

6. In order to prove its case, the authorized officer of the appellant/complainant(Company), namely, Dyal Singh had himself stepped into the witness box as CW1 and had deposed that the respondent had entered into a hire purchase agreement with the complainant for purchase of an auto and to discharge his liabilities qua the hire purchase amount, the respondent had issued the aforesaid cheque (Ex.C3) for a sum of Rs.1,32,000/- in favour of the appellant/Company which had been dishonoured due to insufficient funds.

7. In his defence, the respondent/accused had examined himself as DW-1, stating that he had repaid the loan to the complainant/company but no receipt qua return of the amount by him to the extent of Rs.60,000/- was given by the complainant/Company. However, he had got receipts qua the payment of Rs.42,672/-, which were duly proved as Ex.R1 to R9. He further deposed that the complainant/Company had obtained blank cheques from him on the pretext of hire purchase agreement and the cheque in question had been misused by them, however, he did not owe any money to the complainant.

8. The trial Court, after going through the evidence on record, had convicted the respondent vide judgment and order of sentence dated 02.08.2008 and sentenced him to undergo rigorous imprisonment for a period



of one year, to pay a fine of Rs.5,000/- and in default thereof, to undergo further imprisonment for one month.

9. Aggrieved thereby, the respondent/accused had preferred an appeal before the lower Appellate Court whereby he had been acquitted of the offence under Section 138 of the NI Act vide the impugned judgment dated 11.05.2009 while recording the following findings :-

*“18. No doubt, it has not been deposed by this witness as to on which date, Hire Purchase Agreement was executed, but the accused got that data elicited from him, during his cross-examination. He stated that this Hire Purchase Agreement was executed on 20.05.2002. When the accused himself entered the witness box, as his own witness, he stated that the loan was obtained by him in the year 2002. The cheque Ex.C3 bears the date 22.06.2004. Thus period a limitation of three years had still not expired, when the cheque is alleged to have been issued.*

*19. The onus was upon the complainant that this cheque was issued in discharge of legally enforceable debt. Dial Singh, CW1, has only deposed to the effect that this cheque was issued by the accused, but has not stated that the columns thereof were filled by him and that he had put his signatures in his presence when he was cross examined, he admitted that the writing in the columns is different from the signatures on the cheque. Thus the accused did cross examined the witness to the effect that the cheque was filled up subsequently when the accused entered the witness box, he oatogprically stated that the complainant company had obtained two blank cheques from him and in one of those cheques, amount of Rs 1,32,000/- has been filled and a false complaint has been filed. He was not, at all cross examined by the complainant on that aspect of the case, which means that it accepted that part of the statement to be correct. From that statement of the accused, it*



*stands proved that the complainant had obtained two blank cheques, from him and one of those cheques has been misused by the complainant by filing the amount of Rs. 1,32,000/- and filing the present complaint on the basis of that cheque. Such a complaint could not have been filed, on the basis of such a cheque. Therefore, both these points are decided against the complainant and in favour of the accused.”*

10. It has been revealed from the judgment of the lower Appellate Court that after appreciating the evidence, the following pertinent findings in its judgment dated 11.05.2009 had been recorded:-

- a) The Hire Purchase Agreement was executed on 20.05.2002, and the cheque (Ex.C3) was dated 22.06.2004, indicating that the period of limitation had not expired.
- b) The onus was upon the complainant to prove that the cheque was issued in discharge of a legally enforceable debt.
- c) Significantly, the appellant/complainant CW1, had admitted during cross-examination that the writing in the columns of the cheque was different from the signatures on the cheque.
- d) The respondent (DW-1) categorically stated that the complainant/ Company had obtained two blank cheques from him, and one of them was misused by filling the amount of Rs. 1,32,000/- and filing a false complaint.
- e) Crucially, the complainant did not cross-examine the respondent on this aspect of the blank cheques and their misuse, which implies an acceptance of that part of the statement as correct.
- f) Based on this, it had been concluded that the complainant had obtained blank cheques, and one of them was misused by filling the amount of Rs. 1,32,000/-, rendering such a complaint unsustainable.

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11. This Court is in agreement with the observations of the lower Appellate Court because the admission by the complainant's own witness regarding the disparity between the handwriting in the cheque's columns and the signature, coupled with the unchallenged testimony of the respondent about the misuse of a blank cheque, strongly supports the conclusion that the cheque in dispute was misused by the appellant/Company. The presumption under Section 139 of the NI Act, though available to the complainant, is rebuttable. In this case, the respondent successfully rebutted this presumption through his consistent defence, particularly the unchallenged assertion regarding the blank cheque's misuse.

12. In view of the above and keeping in view the fact that the cheque in dispute had been misused by the appellant/Company, this Court does not find any infirmity or perversity in the judgment of the lower Appellate Court acquitting the respondent for the offence punishable under Section 138 of the NI Act and the appeal is hereby dismissed.

**(H.S.GREWAL)**  
**JUDGE**

**29.05.2025**  
A.Kaundal

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No