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2025:PHHC:050189



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

**CRM-A-1039-2023**

**DATE OF DECISION: 02.04.2025**

**MANOJ GUPTA**

**.....APPELLANT**

**VERSUS**

**STATE OF HARYANA AND ANOTHER**

**.....RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sachin Mittal, Mr. Akshat Mittal,  
Mr. Parth Sharma, Mr. Arnav Mittal, Advocates  
for the appellant.

Mr. Chetan Sharma, DAG, Haryana

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**SANDEEP MOUDGIL, J**

1. The application under [Section 378\(4\)](#) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 12.05.2023 passed by Judicial Magistrate, First class, Faridabad (in short, 'trial court') vide which respondent has been acquitted under section 138 of Negotiable Instruments Act 1881, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to bring home the guilt of the respondent-accused.

2. Briefly put forth, the facts of the case are that the wife of appellant-complainant and respondent-accused were owners and in possession of property i.e house no. 176, Sector 21-C, Faridabad wherein the appellant-complainant executed construction work and as per the advise

of the respondent-accused, he completed the said construction work of three floors building and after the completion of the said work, the appellant-complainant and respondent-accused cleared the accounts according to which Rs. 9,65,000/- were outstanding towards the respondent-accused. Thereafter when the appellant-complainant asked back the money, the respondent-accused issued a cheque bearing no. 061382 dated 31.01.2018 for Rs. 9,65,000/- which when drawn was dishonoured with remarks as “*Insufficient Funds*” vide memo dated 05.02.2018 and 07.04.2018. Thereafter, a legal notice was sent by the appellant-complainant dated 17.04.2018 but the respondent-accused did not comply with the same which forced the appellant to file a complaint under section 138 of NI Act that has been dismissed by the trial court. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court has erred in placing reliance on the report of DW-2 namely Sh. Dinesh Kumar Bhardwaj, handwriting and fingerprint expert who had compared the disputed signatures and handwriting of Mrs. Rajni Gupta on cheque marked as Ex. D-1 by way of available photocopy and to the contrary has also submitted in his cross examination that pen pressure, shading, pen position cannot be examined through photocopy signatures.

4. He further contends that the trial court has failed to appreciate the fact that the cheque placed on record as Ex.C-1 is a forged document and the particulars of the said cheque have been filled by DW-1 i.e Nirranjan Panda and the fact that Rajni Gupta had signed on the alleged blank cheque and accepted the cheque to be used for “electricity authority” is completely false and concocted.

5. He vehemently argues that the trial court has failed to acknowledge that there is no proof or document in support that any

electricity security was due towards the property i.e House no. 176, sector 21-C, Faridabad and rather no averments have been made that an electricity meter was installed on the said property in the name of Sabita Panda.

6. Having heard learned counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

7. It is a settled proposition of law that once the execution of cheque is admitted, the presumptions of Sections 118 and section 139 of the NI Act arises. For convenience, the abovementioned sections are reproduced herein below:-

*“118. Presumptions as to negotiable instruments.—*

*Until the contrary is proved, the following presumptions shall be made:—(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

*(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;*

*(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

*(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;*

*(e) as to order of endorsements —that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

*(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;*

*(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:*

*Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.*

***139. Presumption in favour of holder.—***

*It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”*

8. In the instant case, the appellant during his cross examination has admitted that he had not affixed any document to prove the ownership of Rajni Gupta and Sabita Panda over House no. 176, Sector 21-C, Faridabad and has further testified that no written agreement was executed between him and respondent-accused Sabita Panda regarding construction work over the house in question. He further fails to testify the fact that how the cheque amount of Rs.9,65,000/- was calculated since he did not produce any document such as bill, invoice or even a receipt on record to prove the alleged construction work.

9. Moreover, from the perusal of the file it is clearly evident that the respondent-accused got no legally enforceable debt towards the appellant-complainant qua the cheque in question. Further, in case of “***Main Pal and another Versus State of Haryana and others 2004(2) RCR (Criminal) 466***, the Apex Court has held that if two views are possible on the evidence adduced in the cases, one pointing to the guilt of the accused and the other of his innocence, the view which is favourable to the accused should be adopted.

10. In addition, it is well settled proposition of law that the complainant-appellant has to stand on own legs to prove its case beyond shadow of reasonable doubt by proving the essential ingredients of section 138 of the NI Act. However in the instant case, the case set up by the appellant-complainant do not inspire confidence of the court rather it lacks inherent credence.

11. In the light of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 12.05.2023 and as such , having no merit, the appeal stands dismissed.

(SANDEEP MOUDGIL)  
JUDGE

02.04.2025

*Meenu*

*Whether speaking/reasoned*      *Yes/No*  
*Whether reportable*              *Yes/No*