



IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH

113

CRM-A-1663-MA-2017  
Date of Decision: 12.05.2025

M/S. OM PARKASH ARUN KUMAR

.....APPELLANT

VERSUS

GURMUKH SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shvetanshu Goel, Advocate  
for the applicant/appellant.

Mr. Gursahib Singh Hundal, Advocate for  
Mr. P.S. Hundal, Advocate for the respondent.

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**SANDEEP MOUDGIL, J**

1. The application under [Section 378\(4\)](#) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 02.06.2017 passed by JMIC, Kaithal (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

2. Brief facts of the case are that the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, alleging that the respondent issued a cheque bearing No. 784282 dated 04.06.2016 for an amount of Rs. 1,65,000 from the PNB, Main Branch, Jind Road, Kaithal from his account, to discharge a debt, but it was dishonoured twice, firstly on

06.06.2014 and then on 30.06.2014 with the remarks 'insufficient funds' in the respondent's account. Despite receiving a legal notice dated 04.07.2014, the respondent failed to respond or make the payment, prompting the appellant to file a complaint under Section 138 of the NI Act.

3. Learned counsel for the appellant submits that the learned Judicial Magistrate Ist Class, Kaithal has committed a grave error in law and on facts by misappreciating the evidence adduced by the complainant-appellant.

4. He submits that the Trial court dismissed the complaint filed by the appellant on the ground that the Bahi Entries on the basis of which the appellant had filed the complaint was not according to rules and stated that the Bahi entries shall not alone be sufficient to charge any person with liability. The Trial court failed to consider the fact that Bahi Entries are per se admissible in evidence under the Indian Evidence Act. Thus the finding recorded by the Trial Court is illegal and against the provision of law.

5. He further submits that the Trial Court did not consider the facts and circumstance of the case judicially and failed to appreciate the evidence put on record. The Trial Court failed to take into account the statement made by CW3 Krishan Garg, Accountant who stated that he himself had maintained all the accounts and Bahi Entries properly and in accordance with the rules. CW3 Krishan Garg while appearing as witness had made a statement that he himself maintained the statement of accounts i.e. Bahi Khata. He further made a statement that there are signature of Gurmukh Singh on Ex.3 and he also read over the contents of the entries to Gurmukh Singh, respondent.

6. Having heard the counsel for the appellant 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. The court below has rightly observed that there is no concrete or cogent evidence on record to establish how, when, and in what manner any advance/loan was made to the accused-respondent, nor is there clarity on the balance payable. The entries in the account books (Bahi entries) are not legally enforceable instruments like promissory notes or bills of exchange. While such entries may indicate liability under Section 34 of the Indian Evidence Act, they alone do not constitute valid grounds for a complaint under Section 138 of the Negotiable Instruments Act. The complainant/appellant's claim of Rs. 1,17,000 with 18% annual interest appears arbitrary, especially as the interest of Rs. 48,000 claimed is excessive compared to the actual amount due over the stated period (Rs. 16,617). This discrepancy indicates that no legally enforceable debt existed on the date of issuance of the cheque. The accused/respondent a simple rural man, had issued the cheque only as security, as no legally enforceable debt existed on the date of issuance. Hence, the Trial Court has committed no error in acquitting the respondent/accused.

8. Moreover, presumptions under section 138 and 139 of the NI Act are rebuttable presumptions and same are rebuttable on preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumption under the NI Act, it is for the complainant to prove the case beyond all reasonable doubts and the same has been supported by the Apex Court in '*M/s Kumar Exports vs M/s Sharma Carpets Crl Appeal No. 2045 of 2008.*'



9. In the light of above discussion, this court is of the strong view that no fault can be found with the judgment passed by the trial court and as such the present application under section 378(4) Cr.P.C stands declined as well the appeal, having no merit stands dismissed.

10. Ordered accordingly.

11. Registry is directed to pay the remuneration to the learned Amicus Curiae for the appellant as per law.

30.04.2025

*Anuradha (a)*

(SANDEEP MOUDGIL)  
JUDGE

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