

(2011) 11 P&H CK 0218

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 334-MA of 2011

Rambir

APPELLANT

Vs

Manbir Dhaka

RESPONDENT

Date of Decision: Nov. 11, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 378(4)
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Complainant Rambir has filed this petition u/s 378(4) of the Code of Criminal Procedure for grant of leave to appeal against judgment of acquittal dated 20.10.2010 passed by learned Judicial Magistrate Ist Class, Hansi thereby dismissing criminal complaint instituted by appellant against respondent u/s 138 of the Negotiable Instrument Act, 1881 (in short, the Act).

2. I have heard learned counsel for the appellant and perused the case file.

2. The complaint has been dismissed because the cheque was not issued for any legally enforceable liability.

3. Learned counsel for the appellant contended that one Ram Kumar had hired trucks of the appellant but Ram Kumar, Contractor did not pay the hiring charges of the complainant. Thereupon Panchayat was convened and the respondent-accused as guarantor of Ram Kumar issued two blank cheques including the one mentioned in the complaint in favour of the complainant-appellant, in discharge of liability of amount due from Ram Kumar.

4. I have considered the aforesaid contention but the same cannot be accepted. Counsel for the appellant conceded that in the complaint, no such liability of respondent-accused as now sought to be canvassed was even alleged. On the other hand, in the complaint, it was simply mentioned that the accused in discharge of his liability issued the cheque. Mere using words of the statute i.e. words of section 138 of the Act would not entitle the complainant to secure conviction of the respondent-accused without mentioning as to how the respondent was liable to the pay amount for which impugned cheque was issued. There is not even an averment in this regard in the criminal complaint. Consequently, respondent has been rightly acquitted by the trial court. The impugned judgment does not suffer from any illegality or perversity so as to grant leave for appeal against impugned judgment of acquittal.

5. In view of the aforesaid, application for leave to appeal against judgment of acquittal is dismissed being meritless.