

**IN THE COURT OF JAGBIR SINGH MEHNDIRATTA, PCS
ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
FATEHGARH SAHIB (UID-PB0296).**

CIS No. NACT 138/2019
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Date of Institution: 25.03.2019
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Date of Decision: 16.01.2025

Dalvir Singh son of Surinder Singh, son of Minder Singh, resident of Ward No.6, Sirhind City, Tehsil and District Fatehgarh Sahib.

.... Complainant.

Versus

Baljit Singh son of Sher Singh, resident of village Saimpla, Tehsil Bassi Pathanan, District Fatehgarh Sahib.

....Accused.

**Complaint under Section 138 of the Negotiable of Instruments Act, 1881
P.S. Sirhind, District Fatehgarh Sahib.**

Present: Complainant with Sh. Vinod Kumar Chopra, Advocate.
Accused on bail with represented by Sh. P.C. Joshi, Adv.

J U D G M E N T:-

The present complaint has been filed by the complainant against accused for dishonour of cheque under Section 138 of the Negotiable Instruments Act (hereinafter referred to as NI Act) and failure to make payment after service of legal notice within the stipulated period.

2.1 Brief facts of the complaint are that the complainant has alleged that the accused Baljit Singh along with Harpreet Singh, Baljit Singh son of Gurdial and Jaswant Singh are working as property dealers and they told the complainant that all of them have legal and saleable right over the land

measuring 13 kanals 8 marlas i.e. 1 kanal 12 marla of land being 101/128 share of the land measuring 2 kanals 1 marla, comprising in khata No.77/122, khasra No.47//23/1/1 (0-11), 23/1/2 (1-10) and 2 kanals 17 marlas of land being 57/287 share of the land measuring 14 kanals 7 marlas, comprising in khata No.98/154 to 156, khasra No.47//21/1 (3-4), 48//25/2 min (2-11), 48//25/2 min (2-17), 48//24/2 (3-12), 25/1 (2-3) and 1 kanal 17 marlas of land being $\frac{1}{2}$ share of the land measuring 3 kanals 15 $\frac{1}{2}$ marlas, comprising in khata No.486/785, khasra No.47//22/2/2 (0-4-1/2), 22/3 (3-11) and 3 kanals 8 marlas of land being 101/128 share of the land measuring 4 kanals 7 marlas, comprising in khewat No.488, Khatoni No.787, Khasra No.47//21/2 (4-7) and 3 kanals 14 marlas of land being $\frac{1}{2}$ share of the land measuring 7 kanals 9 marlas, comprising in khewat Khatoni No.638/998, khasra No.35//20/1/1 (1-14), situated at village Nandpur, Tehsil Bassi Pathanan, District Fatehgarh Sahib. The accused along with above said representatives agreed to sell the above said land along with passage, pahi, khala, water and all other rights appurtenant thereto, in favour of the complainant for a consideration of Rs.35,50,000/- per acre, vide agreement to sell dated 14.05.2012 and the same was read over and explained to the accused and said Harpreet Singh etc and after having admitted the contents of the same to be true and correct, all them signed the same in the presence of complainant and in the presence of its marginal witnesses and got the said agreement attested in their presence from the marginal witnesses and the said facts were mentioned in the said agreement.

2.2 It is further averred that at the time of execution of agreement the accused and other Harpreet Singh etc. received an amount of Rs.9 lac out

of the total sale consideration from the complainant, as earnest money in the presence of attesting witnesses and they agreed vide agreement to sell dated 14.05.2012 that the sale deed of the said land shall be got executed on or before 25.07.2012 and the balance of sale consideration was to be paid by the complainant to the accused and Harpreet Singh, etc. at that time and the incidental expenses were also to be borne by the complainant.

2.3 It is further averred that the property dealers told the complainant that the real owner of the property was Baldev Singh son of Darbara Singh and they assured to get the sale deed executed from him and also assured that the property was free from all kinds of charges and encumbrances and if loan of any kind is found on the said property, then all of them will be bound to get the same redeemed before the stipulated date. On 22.05.2012, Harpreet Singh, Jaswant Singh and Baljit Singh son of Gurdial Singh received another amount of Rs.1 lac from the complainant on their behalf as well as on behalf of the accused and in this regard a writing dated 22.5.2012 was also made.

2.4 It is also averred that on 25.07.2012, the sale deed of the above said property could not be executed and Harpreet Singh, Jaswant Singh and Baljit Singh son of Gurdial Singh on their behalf as well as on behalf of the accused got the stipulated date extended on 27.07.2012 till 10.08.2012 and writing dated 27.07.2012 was also scribed and the same was signed by them. Accused along with representatives again requested the complainant for an amount of Rs.6,30,000/- and the complainant agreed for the same. They all received Rs.6,30,000/- from the complainant on 27.07.2012. They again got extended the date on 27.07.2012 till 20.08.2012. In this way, they all received

total amount of Rs.16,30,000/- from the complainant. A separate writing dated 27.07.2012 was executed behind the last page of the agreement.

2.5 It is also averred that on 16.08.2012 Baldev Singh got executed the sale deed dated 16.08.2012 in favour of the complainant at the collector rate of Rs.23,50,000/-, because the accused and Harpreet Singh etc. in collusion and connivance with said Baldev Singh told the complainant that the sale deed will be executed and registered at the collector rate and a lot of amount to be incurred on stamp duty/paper for sale deed will be saved. On 16.08.2012, all of them received another amount of Rs.23,50,000/- from the complainant in the presence of Baldev Singh and on behalf of Baldev Singh and in collusion and connivance with each other. In this way, they all received Rs.39,80,000/- from the complainant. After that, they all did not appear before the Sub Registrar Fatehgarh Sahib for the registration of the said sale deed. Two days prior to 14.08.2012, the complainant had transferred an amount of Rs.18,46,250/- in the account of Harpreet Singh with the consent of accused and other representatives. The complainant also withdrew an amount of Rs.26 lacs from his account on 14.08.2012 and handed over the said amount to all of them. In this way, the complainant had paid the entire sale consideration of Rs.59,46,250/- by way of transfer of amount through his bank account to the accused and said Harpreet Singh, etc. but the possession of the land was not delivered to the complainant.

2.6 Accused and Harpreet Singh etc. in order to satisfy the complainant, together executed another agreement dated 23.08.2012 in favour of the complainant, in which they all have admitted the fact that they have already received the entire sale consideration of Rs.59,46,250/- from the

complainant and all of them undertook that they will be bound to get the sale deed executed and registered in favour of the complainant from the real owner i.e. Baldev Singh and the complainant was left at liberty to get the sale deed executed either in his name or in the name of any other person and the complainant undertook to bear all the expenses of the sale deed and the legal heirs of all of them were also bound by the terms and conditions of the said agreement. If the accused and Harpreet Singh etc. failed to get the sale deed executed and registered, then, the complainant reserved the right to get the same executed and registered through court and all of them gave the entire amount of this land to said Baldev Singh and all of them are in possession of the said land and the recital of the delivery of possession of land was also written in the said agreement, but the same was not delivered to the complainant. The said agreement to sell was read over to all of them and they all signed upon it in the presence of the complainant and in the presence of the marginal witnesses and the same was also got attested.

2.7 It is further averred that thereafter the complainant, accused and Harpreet Singh etc. tried to convince Baldev Singh to execute and get registered the sale deed, but Baldev Singh did not agree. Again the matter was compromised between them and an agreement cum compromise was executed in favour of the complainant, vide which it was agreed that the sale deed shall be got executed in his favour directly from the vendor Baldev Singh and on 16.08.2012, said vendor executed sale deed in favour of the complainant and thereafter, said Baldev Singh disappeared with the money given by the complainant and he did not get the sale deed registered and that the complainant had already paid the entire sale consideration to all of them

and that all of them were giving eight cheques worth Rs.60,00,000/- (Rs.7,50,000/- each) i.e. 2 cheques each of the accused and said Harpreet Singh etc., to the complainant i.e. cheques No.000008 and 000009, worth Rs.7,50,000/- each of said Harpreet Singh, drawn at HDFC bank Sirhind road, VPO Chunni Kalan, District Fatehgarh Sahib and cheques No.866320 and 866321 of Rs.7,50,000/- each of said Baljit Singh son of Gurdial Singh, drawn at Canara Bank, branch Chunni Kalan, District Fatehgarh Sahib and cheques No.866434 and 866435 of Rs.7,50,000/- drawn at Canara Bank, branch Chunni Kalan, District Fatehgarh Sahib and cheques No.085413 and 085414 of amounting to Rs.7,50,000/- each of Jaswant Singh drawn at Bank of Maharashtra, branch Chunni Kalan. The said cheques were handed over to the complainant without mentioning his name and without putting any date. It was agreed that the complainant shall file a civil suit against said Baldev Singh and till the decision of the said case, the said cheques will remain in the custody of the complainant as Amannat/Guarantee and if the case is decided in favour of the complainant, then, the complainant will return the said cheques to all of them and if the suit is decided against the complainant, then, the complainant shall have the right to fill the said cheques i.e. to write his name and date on the said cheques and then to present the same in the banks of the accused and said Harpreet Singh etc. and then get the said cheques encashed. All of them signed the said document in the presence of complainant and the marginal witnesses. Vide agreement dated 30.05.2014, they undertook to return the said amount to the complainant.

2.8 On the basis of the said agreement/compromise the complainant filed the civil suit but the same was dismissed. As per the agreement dated 30.05.2014 the complainant filled the particulars in the said cheques.

2.9 The complainant presented the cheque No.866435 for encashment to his bank i.e. Union Bank of Indian, branch at Fatehgarh Sahib, Tehsil and District Fatehgarh Sahib but the same has been dishonoured on 29.01.2019 along with a memo dated 29.01.2019 containing remarks 'Funds Insufficient' and the 'Account inoperative/Dormant'. After receiving memo from the bank, the notice was issued to the accused on 05.02.2019 through counsel to pay the agreed amount to complainant. The accused did not reply to the notice and did not return the amount to the complainant; hence, after waiting for the statutory period of one month, the complainant filed the present complaint for prosecution of the accused.

3. During preliminary evidence, complainant Dalvir Singh himself stepped into the witness box as CW1. After going through the preliminary evidence on record, produced by the complainant, the accused was ordered to be summoned to face trial under Section 138 of the Act.

4. On appearance of the accused, he was admitted to bail. A *prima facie* case having been made out against the accused, he was served with notice of accusation for offence punishable under Section 138 of the Act, to which he pleaded not guilty and claimed trial.

5.1 In the after notice evidence, complainant Dalvir Singh, vide his affidavit Ex. CW1/A has reiterated the allegations contained in the complaint, as narrated above. He has also tendered in evidence documents i.e. agreement to sell Ex. C1, receipt of payment Ex. C2, extension agreement

Ex. C3, extension agreement Ex. C4, Account statement Ex. C5, copy of sale deed dt 16.8.2012 Ex. C6, copy of the self declaration Ex. C7 and copy of affidavit Ex. C8, copy of agreement to sell Ex. C9, agreement of compromise Ex. C10, copy of judgment Ex. C11, decree sheet Ex. C12, original Cheque ExC13, return memo dt 29.01.2019 Ex. C14, Legal Notice dt. 04.02.2019 ExC15, Postal Receipt ExC16 and original cover Ex.C17.

5.2 CW2 Balvir Singh who deposed on the lines of complainant and proved the documents i.e. agreement to sell Ex. C9, agreement Ex. C10.

5.3 CW3 Khushket, Clerk of Vinod Kumar Chopra, Advocate identified the seal and signatures of Sh. Vinod Kumar Chopra, Advocate and proved legal notice Ex. C15, postal receipt Ex. C16.

5.4 CW4 Sukhvir Singh, Stamp Vendor, Tehsil Complex Fatehgarh Sahib proved entry No. 9310 regarding sale of stamp papers which is Ex.CW4/A and is dt. 23.08.2012 and proved photocopy of stamp paper Ex.CW4/B.

5.5 CW5 Sanjeev Kumar Kaura, Stamp Vendor, Teh. Complex Fatehgarh Sahib proved entry No. 2773 regarding sale of stamp papers on 30.5.2014 which is Ex. CW5/A, photostat of stamp papers Ex. CW5/B.

5.6 CW6 Sham Sunder, Stamp Vendor, Tehsil Complex Bassi Pathana Fatehgarh Sahib proved entry No. 1652 regarding sale of stamp papers on 14.05.2012 which is Ex. CW6/A, photostat of stamp papers Ex. CW6/B.

6. Thereafter, complainant closed his evidence.

7. Statement of accused under Section 313 Cr.P.C. was recorded, wherein all the incriminating circumstances appearing against the accused

was put to him. The plea of the accused is reproduced here verbatim as under:-

“I am innocent. I have no liability to pay any amount to the complainant. I never issued the cheque in question in the favour of complainant to discharge any liability. In fact, the complainant is running the business of property dealing with me and other persons at Chunni Kalan and had stolen the cheque in question from our office in my absence. The complainant misused the cheque in question just to extort huge amount from me. No notice of demand was ever issued by the complainant to me nor I received any such notice. The complainant had direct dealing with regard to the purchase of land measuring 13 Kanal 8 Marla situated in village Nandpur with the owner of the land Baldev Singh and the complainant directly paid the price of the land directly to said Baldev Singh and I never got settled any deal of the purchase of the said land with Baldev Singh and complainant. The complainant himself filed the suit for specific performance against said Baldev Singh. The complainant filed the present complaint by misusing the stolen cheque in question.”

8. No evidence in defence has been led by the accused but the accused tendered into his defence evidence certified copy of plaint Ex.R1 and certified copy of affidavit and cross-examination Ex.R2 and the accused closed his evidence vide his statement suffered in the Court today.

9. I have heard learned counsel for the complainant and learned defence counsel and have considered the record of the judicial file with their able assistance.

10. The material **point for determination** in this case is:-

“Whether the accused, in order to discharge his legal liability, issued cheque bearing number 866435 dated 28.01.2019 for an amount of Rs. 7,50,000/- in favour of the complainant, which, on presentation, was dishonoured with remarks “Account is inoperative/dormant” and “Funds Insufficient” and further, despite issuance of a legal notice, the accused failed to make payment of the cheque amount to the complainant, and as such, has committed an offence under Section 138 of Negotiable Instrument Act?”

FINDINGS

11. In this case, the complainant has relied upon agreement to sell dated 14.05.2012 whereby the accused facing trial along with Harpreet Singh, Baljit Singh and Jaswant Singh had agreed to sell land measuring 13 kanal 8 marla of village Nandpur to the complainant and it was mentioned in this agreement that the said land belongs to Baldev Singh son of Darbara Singh. The total sale consideration was mentioned as Rs. 35,50,000/- per acre. Earnest money was mentioned as Rs. 9,00,000/-. The stipulated date for execution of sale deed was fixed as 25.07.2012. As per endorsement Ex. C2, there is recital that on 22.05.2012, Harpreet Singh, Jaswant Singh and Baljit Singh had received Rs. 1,00,000/- from the complainant. There is another endorsement Ex. C3 dated 27.07.2012, vide which the date for execution of the sale deed was extended till 10.08.2012. Vide another endorsement Ex. C4, the date for execution of sale deed was extended upto 20.08.2012 and there is recital regarding payment of additional earnest money of Rs. 6,20,000/- and it is signed by Harpreet Singh, Baljit Singh, Baljit Singh and Jaswant Singh. Subsequently, on 16.08.2012, the owner of land namely Baldev Singh and the complainant herein had gathered at the Tehsil Complex, Fatehgarh Sahib and they executed sale deed Ex. C6 whereby

complete recital regarding sale of land as well as payment of sale consideration was mentioned in the sale deed. However, it could not be got registered as the owner of the land managed to flee away. Subsequently, another agreement to sell was executed, which is dated 23.08.2012, in which the accused facing trial along with Harpreet Singh, Baljit Singh and Jaswant Singh had acknowledged that they had agreed to get sold the land in question from Baldev Singh to Balbir Singh and had received a sum of Rs. 59,46,250/- from the complainant. It was specifically mentioned that Baldev Singh was owner of the land and the accused had got executed an agreement to sell in their favour from the said Baldev Singh. On 30.05.2011 (actual dated 30.05.2014), agreement Ex. C10 was executed between the accused facing trial, Baljit Singh, Harpreet Singh and Jaswant Singh being the first party and the complainant being the second party, vide which the accused had acknowledged the above said agreements to sell and it was mentioned that the owner of the land Baldev Singh had fled away with the money without getting the sale deed registered and it was agreed that the complainant shall file a suit against Baldev Singh. It was also mentioned that the accused had handed over two cheques to the complainant by mentioning their numbers including the cheque in question. It was agreed that if the suit to be filed by the complainant succeeded, then, he would return the cheques to the accused and in case his case did not succeed, then, he would present the cheque before the bank for being honoured. Subsequently, suit bearing no. CIS 816/2014 was filed by the complainant against Baldev Singh, which was dismissed by the Ld. Addl. Civil Judge (Senior Division), Fatehgarh Sahib on 05.11.2018. Thereafter, the present complaint has been filed by the

complainant on the ground that the cheque issued to him by the accused was dishonoured.

12. The Ld. Defence Counsel has firstly argued that the agreement Ex. C1 and agreement Ex. C9 have not been proved by the complainant as their attesting witnesses have not been examined by the complainant. It is also submitted that the sale deed Ex. C6 and agreement of compromise Ex. C10 have also not been proved as CW2 Balbir Singh who is their witness has remained unsuccessful in proving the due attestation of these documents as well as their due execution. He has referred to cross-examination of CW2 Balbir Singh to assert that he has no knowledge regarding the land in question as well as passage of sale consideration or that the accused is partner/proprietor of Sandhu Property Dealer. It is also submitted that neither the scribe of Ex. C9 has been examined nor there is any stamp of any typist on the same, who prepared it.

13. Having regard to these submissions, this Court is of the considered view that firstly, the complainant has examined CW6 Sham Sunder Stamp Vendor who had sold three stamp papers bearing serial number P201941, P201942, P201943 each in the sum of Rs. 100/- i.e. total value Rs. 300/- and has proved entry no. 1652 Ex. CW6/A in his register, as per which the said stamp papers were sold to Harpreet Singh son of Mohinder Singh resident of village Mehmadpur who is the accused facing trial in the connected case and is partner of the present accused. On these stamp papers, the agreement Ex. C1 dated 14.05.2012 along with endorsements Ex. C2 to Ex. C4 have been prepared. There are signatures of Harpreet Singh behind the stamp papers as well as in the register of the stamp vendor. No expert has

been examined by the accused to disprove his signatures in the register of the stamp vendor as well as behind the stamp paper. Thus, the line of evidence has remained unrebutted regarding presence of signatures of Hapreet Singh on the above documents. In the light of these circumstances, the mere argument of the Ld. Defence Counsel that no identity card of Harpreet Singh was retained by the Stamp Vendor and he personally does not know him is found to be without any merit.

14. Further, the complainant has examined CW4 Sukhvair Singh Stamp Vendor who had sold four stamp papers bearing serial number E570263, E570264, E570265, E570266 each in the sum of Rs. 500/- i.e. total value Rs. 2000/- and has proved entry no. 9310 Ex. CW4/A in his register and has also proved its endorsement Ex. CW4/B behind the stamp papers, as per which the said stamp papers were sold to Harpreet Singh son of Mohinder Singh resident of village Mehmadpur who is accused facing trial in the connected case and is partner of the present accused. On these stamp papers, subsequent agreements Ex. C9 dated 23.08.2012 has been prepared. There are signatures of Harpreet Singh behind the stamp papers as well as in the register of the stamp vendor. No expert has been examined by the accused to disprove his signatures in the register of the stamp vendor as well as behind the stamp paper. Thus, the line of evidence has remained unrebutted regarding presence of signatures of Hapreet Singh on the above documents. In the light of these circumstances, the mere argument of the Ld. Defence Counsel that no identity card of Harpreet Singh was retained by the Stamp Vendor and he personally does not know him is found to be without any merit.

15. Further, the complainant has examined CW5 Sanjiv Kumar Kaura Stamp Vendor who had sold one stamp paper bearing serial number S579708 in the sum of Rs. 100/- and has proved entry no. 2773 Ex. CW5/A in his register and has also proved its endorsement Ex. CW5/B behind the stamp papers, as per which the said stamp papers were sold to Harpreet Singh son of Mohinder Singh resident of village Mehmadpur who is accused facing trial in the connected case and is partner of the present accused. On these stamp papers, agreement of compromise Ex. C10 dated 30.05.2014 has been prepared. There are signatures of Harpreet Singh behind the stamp papers as well as in the register of the stamp vendor. No expert has been examined by the accused to disprove his signatures in the register of the stamp vendor as well as behind the stamp paper. Thus, the line of evidence has remained un rebutted regarding presence of signatures of Hapreet Singh on the above documents. In the light of these circumstances, the mere argument of the Ld. Defence Counsel that no identity card of Harpreet Singh was retained by the Stamp Vendor and he personally does not know him is found to be without any merit.

16. The above line of evidence has categorically established that the stamp papers for execution of each of the said agreement were purchased by Harpreet Singh who is an accused facing trial in the connected case and is partner of the present accused. Thus, the connection of the accused with the aforesaid documents is duly established.

17. It has been stated in the plea to the statement under Section 313 of Cr.P.C. by the accused that the complainant is running business of property dealing with the accused and other persons at Chunni Kalan. Thus, there is an

admission on the part of the accused that he is partner in the Property Dealing business. Thus, failure of CW2 Balbir Singh to clarify this aspect in his cross-examination does not cause any dent in the version of the complainant.

18. The sale deed Ex. C6 as well as agreement of compromise Ex. C10 are based upon the earlier agreement to sell. The negotiation for sale of the land had taken place in the agreement Ex. C1 whereas receipt of complete sale consideration was acknowledged by the accused and his partners in the subsequent agreement to sell Ex. C9. Thus, at the time of execution of the sale deed Ex. C6 as well as at the time of execution of agreement of compromise Ex. C10, there was neither any opportunity with the witness Balbir Singh to physically examine the property agreed to be sold nor there was opportunity with him to witness transfer of the sale consideration nor it was expected of him to be a witness to either of the said aspects because the agreement to sell had been already executed and the sale consideration had also passed. In the sale deed Ex. C6, there is specific recital that the sale consideration had already passed hands. Similarly, in the agreement of compromise Ex. C10, there is specific recital regarding execution of the sale deed Ex. C6 and failure to get the same registered. Thus, it is held that no dent is created in the evidence as well as attestation of sale deed Ex. C6 and agreement of compromise Ex. C10 by CW2 Balbir Singh merely on the ground that he has not physically seen the property or because the sale consideration did not pass hands in his presence.

19. In so far as the aspect of non-examination of the scribe of these documents and non-mentioning the name of the typist on these documents is concerned, this court is of the considered view that neither any plea has been

taken by the accused nor any evidence has been adduced that the complainant was in the position to dominate the will of the accused or that he was in the position to get executed any document by exercise undue influence upon the accused. Examination of scribe and typist is necessary only when such an argument has been raised and in order to dispel existence of any such extraneous factors. Since these factors do not exist in the present case, it is held that no dent has been created in the version of complainant due to non-examination of the scribe or by not revealing his name or even by not affixing the seal of the typist upon the documents in question.

20. From the cross-examination of CW1 complainant, it has been argued by the Ld. Counsel for accused that he has failed to prove his financial capacity to be able to make payment of the amount in question; he has deposed at variance with his pleaded case that the agreement to sell was not with Baldev Singh rather it was with the dealers i.e. accused and his partners. It is further pointed out that in the sale deed dated 16.08.2018, the total sale consideration is mentioned as Rs. 23,50,000/- whereas the complainant is claiming a sum of Rs. 5946250/- on the basis of agreement Ex. C9, regarding which he has filed 8 cases under Section 138 of Negotiable Instruments Act, regarding dishonour of 8 cheques, which are mentioned in detail in agreement of compromise Ex. C1, including the present case and the present cheque. He has further drawn attention of the Court towards the pleadings of the previous civil suit to assert that these are at total variance with the pleadings of the present case and has referred to the cross-examination of complainant in which he has stated that the pleadings and evidence of the civil suit are correct. It is also submitted that the complainant

had filled the cheque in question without any corresponding legal liability and the cheque was handed over to him in 2014 but he had no right to fill the same in the year 2019. He has drawn attention of the Court towards compromise Ex. DA which is dated 01.02.2013, as per which the complainant had purportedly stated that he had received the entire outstanding amount from Harpreet Singh son of Mohinder Singh, due to which it is asserted that the presentation of cheque amounts to fraud upon the court and the said person. Further attention of the Court has been drawn towards certified copy of the evidence, which the complainant has suffered in the civil suit, which is Ex. R2 and it is submitted that his entire deposition in the civil suit was at total variance with the pleaded case as well as evidence of the present complaint. It is also submitted that Sh. Ram Singh Somal Advocate remained Counsel for the complainant in the civil suit and in the cross-examination Ex. R2 in the civil suit, the complainant had admitted that the entire negotiation of the sale transaction was conducted by the said advocate, whereas in the present group of cases, the complainant had neither kept the said advocate as a witness nor as an accused but has simply omitted to mention his role in the pleadings of the present case. It is further asserted that the complainant never moved any application before the Sub Registrar on 16.08.2012 when said Baldev Singh fled away from the office of Sub Registrar without getting the sale deed registered, due to which it is pointed out that proper procedure was not followed by the complainant, and as such, no credibility can be attached to his claim. Further, the attention of the Court has been drawn towards endorsement Ex. C3 which was purportedly made on 27.07.2012 and it is submitted that no date of 27.07.2012 was fixed by the

parties for execution of the sale deed, whereas the actual date stipulated for execution of the sale deed was 25.07.2012 as per agreement to sell Ex. C1. Further, it is pointed out that the complainant never filed any suit for recovery of amount on the basis of supplementary agreement to sell Ex. C9 nor he has filed any recovery suit regarding the cheque in question, due to which the conduct of the complainant is demolished as it is shown that he has not availed all the available remedies under the law. It is also submitted that the complainant has admitted that the name and date in the cheques was filled by him in his own hand which shows that he has wrongly filled the cheque in question without any legal liability. Lastly, it is submitted with reference to statement of account Ex. C5 that the entries of withdrawal and money transfer in the same do not come to Rs. 59,46,250/- and as such, the source of money with the complainant for payment of money to the accused is not proved. On the ground of above submissions, it is prayed that the accused is entitled to be acquitted in the present case by giving him the benefit of doubt.

21. Having heard these submissions and on an appreciation of the evidence on record, this Court is of the considered view that so far as the financial capacity of the complainant is concerned, there is specific recital in the supplementary agreement Ex. C9 dated 23.08.2012 that the accused facing trial along with his partners had received a sum of Rs. 59,46,250/- from the complainant. The statement of account Ex. C5 shows that the complainant had self withdrawn Rs. 9,00,000/- on 14.05.2012 and a sum of Rs. 18,46,250/- was transferred by him to the accused on 14.08.2012. These tally with the sale consideration of Rs. 23,50,000/- which is mentioned in the

draft sale deed Ex. C6. In fact, the entries of statement Ex. C5 show that the complainant had paid more than the sum mentioned in the said sale deeds. In his cross-examination conducted in the civil suit Ex. R2, the complainant had stated that at any given point of time, the maximum amount of money available in his bank account was Rs. 46,00,000/-. In the cross-examination of the present case, he has stated that he is doing the work of selling milk, which is a profitable business in the State of Punjab and judicial notice of this fact can be taken under Section 165 of the Evidence Act. Moreover, in his plea to the statement under Section 313 of Cr.P.C., the accused has submitted that the complainant is doing the work of property dealing in partnership with the accused and other persons at Chunni Kalan. The complainant has categorically stated in his cross-examination conducted in the present case that apart from the bank transfer, the remaining amount was paid by him to the accused in cash. On account of the above mentioned factors, it is held that the complainant is having sufficient financial resources to be able to make payment of the amount of Rs. 59,46,250/-, which is the total amount involved in eight connected cases under Section 138 of the Act.

22. In so far as the variance between the civil suit and the present case regarding the exact amount in question is concerned, this Court is of the considered view that the civil suit was confined to the claim of the complainant against owner of the land namely Baldev Singh and its pleadings were confined and based upon the pleadings of the sale deed Ex. C6 in which the sale consideration was stated to be Rs. 23,50,000/-. Obviously, the complainant could not have claimed more than the said amount in the civil suit, which was for the relief that the complainant had

become owner of the land in question on the basis of sale deed Ex. C6. The pleadings of the civil suit cannot be treated as reflective upon the claim of the complainant in the present case, since those were confined to the claim of the complainant against Baldev Singh. Neither any relief was claimed against the accused nor he was made a party in the civil suit, due to which neither the rule of estoppel nor the rule constructive resjudicata is applicable against the complainant on the basis of pleadings and evidence adduced in the civil case. Moreover, it was a simple suit for claiming title and as such, it does not fall within the definition of Section 40 of the Evidence Act (Section 34 of BSA, 2023), due to which it is held that neither the pleadings nor the decision of the said suit is binding for the decision of the present case but is only relevant to the extent that the complainant had filed a civil suit as per compromise Ex. C10 and that the said civil suit had been dismissed.

23. So far as variance between sale deed Ex. C6 and supplementary agreement Ex. C9 regarding the exact amount of the sale consideration is concerned, this Court is of the considered view that it is an unfortunate part of financial transactions in this country that in the sale deeds, the complete sale consideration is not mentioned just to save payment of proper stamp duty and registration charges. Moreover, the accused along with his partners had entered into agreement to sell Ex. C9 in which the complete sale consideration of Rs. 59,46,250/- has been mentioned, due to which the accused is estopped from denying the same, since the accused has failed to deny and dispute his signatures upon this agreement, whereas this Court has already observed that the Stamp Vendor Sukhvir Singh has duly proved sale of stamp papers of agreement of sale Ex. C9 to Harpreet Singh who is one of

the accused in the connected cases and is partner of the present accused. Moreover, the accused is himself a party to the plot, which was hatched by him with his partners, to deny payment of appropriate stamp duty and registration charges to the State of Punjab, due to which he cannot take advantage of his own wrong and the consequential gap between the contents of agreement Ex. C9 and sale deed Ex. C6 regarding the exact sale consideration.

24. As per agreement of compromise Ex. C10, it is duly mentioned that cheques had been handed over to the complainant by mentioning the serial number of each cheque. There is specific recital in this agreement that in case the suit filed by the complainant was decreed, then, the cheques would be returned by him to the other party and in case the suit was dismissed, then, the cheques could be presented by the complainant in the bank. The suit was filed in 2014. It was decided in 2018 and it was dismissed vide judgment dated 05.11.2018 Ex. C11. Therefore, the cause of action had arisen with the complainant to present the cheque with the bank only after 05.11.2018 when the suit was dismissed. The cheque was presented with the bank on 29.01.2019. Therefore, it can neither be said that the complainant had abused the process of law by presenting the cheque nor it can be said that the cheque is without any legal liability, as it has been presented for duly existing legal liability and within the period of limitation. Hence, the argument to the contrary raised by the Ld. Defence Counsel is found to be devoid of merits.

25. Under Section 20 of the Negotiable Instruments Act, the holder of the cheque in due course of events is duly competent to fill the blank

columns of the inchoate negotiable instrument. In the present case, a perusal of the body of the cheque shows that the amount in words and figures has been written with one hand, whereas the name of the complainant and day have been mentioned with a different pen. The complainant has admitted in the cross-examination that the name and date was filled by him in his own hand in the cheque in question. As per the agreement Ex. C10, it is mentioned that the cheques were blank and due authorization was given to the complainant to fill the same after decision of the civil suit. Therefore, it cannot be said that the complainant has abused the process of law in any manner. The arguments to the contrary raised by the Ld. Defence Counsel are, therefore, found to be devoid of merits.

26. In reference to compromise Ex. DA, it is sufficient to observe that it was executed in the year 2013 whereas the civil suit was filed much after its execution i.e. in the year 2014. Moreover, the amount mentioned in this compromise Ex. DA is much less than the amount which the accused owes to the complainant i.e. the compromise is only regarding an amount of Rs. 3,00,000/- whereas the total amount which the complainant is entitled to recover is in the sum of Rs. 59,46,250/-. Therefore, the compromise Ex. DA cannot be assumed to have extinguished the right of the complainant to recover the amount from the accused as well as other persons who were his partners. Moreover, if compromise Ex. DA was to operate as final settlement of the dispute, then, even the cheque in question and the connected cheques would have been returned to their drawers, which is not the case. Neither the accused nor Harpreet Singh who was party to the compromise Ex. DA ever gave any legal notice or filed any complaint against the complainant for

unauthorized possession of the cheque in question. Due to this, it is held that the compromise Ex. DA does not extinguish the entitlement of the complainant to recover the amount from the accused.

27. In so far as the argument raised by the Ld. Defence Counsel is concerned that the endorsement Ex. C3 is purportedly made on 27.07.2012 and it is submitted that no date of 27.07.2012 had been fixed by the parties whereas the actual date stipulated for execution of the sale deed was 25.07.2012, this Court is of the considered view that any discrepancy in the contents of the endorsements behind the agreement Ex. C1 does not create any dent in the case of complainant in any manner. This case is not based upon specific performance of the agreement to sell Ex. C1. Rather, the main cause of action in this suit is regarding dishonour of the cheque in question. All the agreements stated above as well as the draft sale deed are merely indicative of the fact that there exists a civil dispute regarding the land in question as well as regarding payment of the aforesaid amount by the complainant to the accused and other persons. Thus, the agreements in question are merely links in the chain of evidence. Any discrepancy in their contents does not dislodge the fact that the cheque in question was duly issued by the accused by filing the amount in the same and that the cheque in question duly finds mentions in the agreement of compromise Ex. C10. Therefore, the above noted argument raised by the Ld. Defence counsel is found to be devoid of merits.

28. In so far as the argument of the Ld. Defence Counsel is concerned that the complainant never moved any application before the Sub Registrar on 16.08.2012, this Court is of the considered view that the

complainant had duly filed civil suit against said Baldev Singh. Any acts or omissions of the complainant regarding his remedies under the Registration Act have merged with his act of filing the civil suit. His omission to avail his remedy under the Registration Act was relevant only to the fate of the civil suit. Only the real owner of land i.e. Baldev Singh could have taken advantage of the said omission on part of the complainant. The accused facing trial has no concern with this omission and therefore, he cannot take advantage of this lapse on part of the complainant. Resultantly, this argument is found to be devoid of merits.

29. In so far as the argument is concerned that the complainant never filed any civil suit for recovery of due amount, this Court is of the considered opinion that in the agreement of compromise Ex. C10, it is specifically mentioned that the complainant had reserved the liberty to present the cheque in question along with the remaining cheques before the concerned banks, in case his civil suit against Baldev Singh was dismissed. In the face of specific remedy which was chosen by the complainant, he cannot be compelled to file a civil suit, especially when the accused had also signed the compromise Ex. C10 and never raised any objection against its contents. Thus, the accused is estopped from raising this plea and is also bound to obey the terms of compromise Ex. C10. It is also to be appreciated that the scheme of Negotiable Instruments Act is such that Section 138 has been incorporated in the same in order to provide a faster and more effective remedy to the complainant for recovery of his amount by threatening the accused with penal consequences in case of dishonour of the cheque. The remedy under Section 138 of the Act is the broader remedy which encompasses within itself

the civil right of the complainant to recover his amount as well as the criminal liability of the accused for punishment on failure to satisfy the claim of the complainant. Thus, it is held that no procedural lapse has been committed by the complainant by failing to avail the civil remedy. Resultantly, this argument is also found to be without any merit.

30. In so far as the argument raised by the Ld. Counsel for accused regarding role of Sh. Ram Singh Somal, Advocate is concerned, this Court is of the considered view that in the cross-examination of the civil suit Ex.R2, the complainant had stated that the deal was negotiated by the said advocate. However, neither the said advocate is a party to any of the documents mentioned above nor he is a signatory to the compromise Ex. C10 nor even any upon the cheques involved in the present and the connected cases. Thus, the complainant was under no obligation to either implead him as an accused or cite him as a witness or even to refer to his role in the pleadings of the present complaint.

31. Ld. Defence Counsel has also argued by referring to the plea of accused under Section 313 of Cr.P.C. that the cheque in question has been stolen by the complainant from the office of the accused as the complainant was running a joint property dealing business with the accused and other persons and he has misused the cheque in question by filling the same without any authorization just to extort huge amount from the accused.

32. With reference to the above argument, this Court is of the considered view that upon detection of the theft of the cheque in question, the accused never filed any application before the police nor took any action under the criminal law against the complainant. He did not even issue “Stop

payment instructions” to his banker regarding theft of his cheque which has been dishonoured only on the ground of ‘Insufficiency of Funds’. It is also to be appreciated that the cheque remained in possession of the complainant from 2014 to 2019 which is not a small period of time. Moreover, not only the cheque in question, but seven other cheques were presented by the complainant. It cannot be presumed that four persons each having lost two cheques each in a theft would have remained silent and not taken any action for a considerable period of five years. The accused is not a rustic villager but he is a property dealer having sound knowledge of business transactions as well as legal value of the documents. Thus, his silence for such a long period of time has the tendency to expose the improbability in his pleaded defence. Further, the cheque in question is duly mentioned in the compromise Ex. C10, which has been duly proved by its attesting witness CW2 Balbir Singh. Thus, it is held that the entire defence pleaded by the accused is nothing but a bundle of lies.

33. On account of the discussion made above, it is held that the accused has failed to rebut the statutory presumptions under Sections 139 and 118 of the Negotiable Instruments Act. It is held that the cheque in question has been duly issued by the accused in discharge of his legal liability and for due consideration.

34. Thus, consolidating the discussion referred above, this Court is of the considered view that the accused has remained unsuccessful in creating any doubt in the version of complainant. Therefore, it is held that no reasonable doubt has arisen in the version of complainant of which the benefit of doubt can be afforded to the accused. Hence, the accused is found

to have committed the offence under Section 138 of the Act. Therefore, accused is convicted under Section 138 of the Act. Let, he be taken into custody and heard on the quantum of sentence.

Pronounced: 16.01.2025.

**Jagbir Singh Mehndiratta, PCS,
Additional Chief Judicial Magistrate,
Fatehgarh Sahib (UID No. PB-0296)**

*Harshavinder Singh
Stenographer, Grade-II*

QUANTUM OF SENTENCE

Present: Complainant with Sh. Vinod Kumar Chopra, Advocate.
Convict in custody represented by Sh. P.C. Joshi, Advocate.

35. The convict has been heard on the quantum of sentence. He has prayed that a lenient view may be taken as he is the only bread winner of his family.

36. Having heard the plea of the convict, this Court is of the considered opinion that, in view of the enormity of the offence, given that the cheque amount is Rs. 7,50,000/- this is not a fit case where the convict can be released on probation. Rather, his conduct needs to be reprimanded with stringent punishment. The convict needs to be sentenced adequately so that the process of his reformation may be set in. At the same time, the complainant needs to be compensated for the loss that he has suffered. Therefore, the following sentence is imposed:-

Name of the convict	Under Section	Sentence Awarded
Baljit Singh	138 of N.I. Act.	To undergo RI for a period of 2 years and to pay compensation amount of Rs. 10,00,000/- (Rupees Ten lacs only) to the complainant.

It is further directed that this sentence shall run concurrently with the sentence, which has been imposed upon the convict in case titled as Dalvir Singh versus Baljit Singh bearing NACT/133/2019. The said amount of compensation shall remain suspended for a period of two months to enable the convict to file the appeal, and on his failure to do so, he shall become liable to pay compensation to the complainant at the expiry of the period of Two months. File be consigned to the record room.

Pronounced: 16.01.2025.

**Jagbir Singh Mehndiratta, PCS,
Additional Chief Judicial Magistrate,
Fatehgarh Sahib (UID No. PB-0296)**

*Harshavinder Singh
Stenographer, Grade-II*

JUDGMENT DICTATED ON THE COMPUTER DIRECTLY