2026:PHHC:187672

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-544-2019
Date of Decision: 09.10.2026

JAGMOHAN SINGH

... Petitioner

Versus

SHAMSHER SINGH **...Respondent**

Sr. No.	**Particulars**	**Details**
1.	The date when the judgment was reserved	07.10.2026
2.	The date when the judgment is pronounced	09.10.2026
3.	The date when the judgment is uploaded on the website	09.10.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.K. Hooda, Advocate
for the petitioner.

Mr. Sandeep Goyal, Advocate
for the respondent.

Mr. H.S. Randhawa, Advocate (Amicus Curiae).

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of Complaint Case No.4146 of 2018 dated 21.09.2018 (Annexure P-1) registered under Sections 138, 142 & 143 of the Negotiable Instruments

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Act, the summoning order dated 13.10.2018 (Annexure P-2) passed by the JMIC, Karnal under Sections 138 of the NI Act and all consequential proceedings arising therefrom.

2. The brief facts as emanating from the complaint are that the real brother of the complainant/respondent-Shamsher Singh (hereinafter known as the respondent) was unemployed and the respondent was in search of a job for him. He came in contact with the accused/petitioner-Jagmohan Singh (hereinafter known as the petitioner) who promised a job with the Reliance Company for an amount of Rs.2,20,000/-. The respondent paid the said amount to the petitioner on 05.09.2017. However, as the petitioner was unable to arrange the job, the respondent sought a refund for which the petitioner issued a cheque bearing No.143005 dated 05.07.2018 drawn at the Indian Bank, branch at Rohtak from his account for an amount of Rs.2,20,000. On presentation, the said cheque came to be dishonored with the remarks “payment stopped by drawer”. A legal notice was issued to the petitioner but when the amount was not paid, the complaint came to be filed under Sections 138, 142 & 143 of the Negotiable Instruments Act leading to the consequential summoning order dated 13.10.2018. Copies of the complaint dated 21.09.2018 and summoning order dated 13.10.2018 are annexed as Annexures P-1 & P-2 to the petition.

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3. The complaint dated 21.09.2018 (Annexure P-1) and summoning order dated 13.10.2018 (Annexure P-2) are under challenge in the present petition.

4. The learned counsel for the petitioner contends that for culpability under Section 138 of the Negotiable Instruments Act, the cheque must have been issued for the discharge of a legally enforceable debt. If a person enters into a void contract with another person and money is paid in furtherance of the said void contract for an illegal purpose which is apparently against public policy, the dishonoring of a cheque issued in discharge of a debt which is not legally enforceable would not entail prosecution under Section 138 of the Negotiable Instruments Act. In the instant case, as per the case set up in the complaint, the respondent had paid a sum of Rs.2,20,000 to the petitioner in order to obtain a job for his brother with the Reliance Company and on non-securing of the job the petitioner had issued the cheque in question which was dishonored. He, therefore prays that the complaint, summoning order and all consequential proceedings arising therefrom are liable to be quashed.

5. The learned Amicus Curiae has very ably assisted this Court and contends that the petitioner has enunciated the correct position of law inasmuch as the cheque must have been issued for the discharge of a legally enforceable debt but in the present case, the cheque was issued in furtherance of a void contract and therefore, the dishonour of the same would not entail

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prosecution under Section 138 of the Negotiable Instruments Act. Reliance is placed on the judgments in the cases of ***Avtar Singh Versus Ranjit Singh, 2024 NCPHHC 121202***, ***Khaleel Khan P. Versus Sunil Kumar G.C., Criminal Petition No.4098 of 2019, decided on 04.11.2022*** & ***P. Kulanthaisamy Versus K. Murugan & others, 2026 ACD 238***

6. The learned counsel for the respondent, on the other hand, contends that the petitioner had obtained a sum of Rs.2,20,000/- on the pretext of providing a job to the brother of the respondent. When the job was not so provided the cheque was issued by the petitioner to the respondent which was dishonored on presentation. Not only is an offence under the Negotiable Instruments Act made out but it is a case wherein the petitioner has also cheated the respondent. Therefore, the present petition is liable to be dismissed.

7. I have heard the learned counsel for the parties.

8. In ***Avtar Singh Versus Ranjit Singh, 2024 NCPHHC 121202,*** this Court held as under:-

> "*2. Succinctly the facts of the case are that the petitioner has been prosecuted on the basis of the complaint filed by the respondent/complainant under Section 138 of the 1881 Act. It was contended by the respondent/complainant in the complaint that he was interested in getting the government job in PGI and for the said purpose, Inderjit Singh son of Gurmeet Singh, who was his relative, introduced him to the petitioner and he assured him to provide a government job within two months on paying an amount of Rs.2,00,000/-. On being assured by Inderjit Singh,*

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the respondent/complainant, in the month of February 2018, advanced an amount of Rs.2,00,000/- to the petitioner. However, the respondent/complainant found himself to be deceived by the petitioner as neither he was provided the government job nor the amount paid by him was returned to him. He made requests to the petitioner to refund his amount and hence, the petitioner issued a cheque bearing No.126335, dated 06.06.2018 for a sum of Rs.2,00,000/- drawn on State Bank of India, Branch Sector 12, PGI, Chandigarh, from the account bearing No.10413628035. The respondent presented the cheque for getting it encashed, however, the said cheque was dishonored with the remarks 'payment stopped by drawer'. On assurance of the petitioner, the said cheque was lastly presented on 28.06.2018 for encashment, however, it also met the same fate and returned on 29.06.2018 with the same remarks, i.e. 'payment stopped by drawer'. The respondent/complainant repeatedly tried to contact the petitioner, however, he deliberately avoided the same. The respondent served the petitioner with a legal notice through his counsel, dated 27.07.2018 demanding the cheque amount, however, the petitioner gave a vague reply to the said legal notice. Aggrieved with the same, the respondent/complainant filed the complaint on the allegation that intention of the petitioner was mala fide since beginning and he was fully aware of the fact that the cheque issued by him in discharge of his legal liability towards the complainant would be dishonored as he had stopped the payment of the same. On presentation of the complaint, the learned trial Court, finding a prima facie case, summoned the petitioner vide impugned summoning order, dated 24.09.2018. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

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6. On hearing the learned counsel for the parties and perusing the record, it is apparent from the bare reading of the impugned complaint that the respondent/complainant had filed the complaint for prosecuting the petitioner as the cheque issued by him for an amount of Rs.2,00,000/- was dishonored on its presentation with the remark 'payment stopped by the drawer'. This was the specific stand taken by the respondent that the amount was paid by him for securing a government job through illegal means. After dishonoring of the cheque, legal notice was also issued by the respondent wherein again the stand taken in the complaint was reiterated. The judgments relied upon by learned Amicus Curiae are squarely applicable in the facts and circumstances of the present case. Provisions of Sections 23 and 2(g) of the 1872 Act are relevant, which read as under:-

> *"Section 23.What consideration and objects are lawful, and what not.- The consideration or object of an agreement is lawful, unless-*
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> *it is forbidden by law; or*
>
> *is of such a nature that, if permitted, it would defeat the provisions of any law; or is faudulent; or*
>
> *involves or implies, injury to the person or property of another; or*
>
> *the Court regards it as immoral, or opposed to public policy.*
>
> *In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."*
>
> *As per section 2(g) of the Indian Contract Act, an agreement not enforceable by law is said to be void."*

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7. Sections 138 and 139 of the 1881 Act read as under:

"138-Dishonour of cheque for insufficiency, etc., of funds in the account.-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may

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be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

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 Jeyaramachandran's case (supra), it has been held as under:-

"18. Accordingly, as held by the Delhi High Court, in the abovesaid decision, the case of the appellant would not fall in any of the abovesaid three classes of cases inasmuch as securing of job at abroad is not an unlawful object. Though securing a job at abroad may not be an unlawful object but what is unlawful is the consideration paid to it and the consideration having been already paid by the appellant, the illegality stood completed on the part of the appellant and inasmuch as the appellant would have to rely upon the illegality to make out his claim or enforce the same, this case does not fall within the three class of cases mentioned above and as regards the second class of cases above referred to, in that backdrop, the Supreme Court in the decision reported in AIR 1968 SC 534 (Sita Ram v. Radha Bai) had held that it is settled law that where the parties are not in pari delicto, the less guilty party may be able to recover the money paid or property transferred, under the contract. It was further held that such possibility could arise in the three situations:

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'1. The contract may be of kind which has been made illegal by statute in the interest of a particular class of persons of whom the plaintiff is one;

2. The plaintiff must have been induced to enter into the contract by fraud by strong pressure;

3. The defendant is under a fiduciary duty to the plaintiff and it is in connection with this fiduciary relationship that moneys have come into his hands as proceeds of a transaction albeit illegal'. None of the abovesaid three situations arise in the present case.

19. The doctrine or rule of in pari delicto is the embodiment of the principle that the Courts refuses to enforce the illegal agreement at the instance of the person who is a party to the illegality or fraud. As above pointed out, the three exceptional conditions to which the abovesaid maxim does not apply, not applying to the facts and circumstances of the present case, resultantly, as held by the Delhi High Court, in the abovesaid decision, considering the facts and circumstances of the present case, there did not exist any legally enforceable debt or liability for the discharge of which the cheques in question could be held to have been issued, in such view of the matter, Section 138 of the Negotiable Instruments Act would not be attracted and the abvoesaid aspects of the matter having also been taken into consideration by the Appellate Court and inter alia rightly chosen to acquit the respondent of the offence put forth against him."

9. In R.Parimala Bai's case (supra) it has been held as under:

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"24. So far as Section 139 of the Negotiable Instruments Act is concerned, of course there is a presumption under law. Initially the court has to draw presumption in favour of the complainant if on plain reading of the complaint, the Court is of the opinion that the complainant has pleaded that there existed a legally recoverable debt and in support of that contention. The presumption has to be raised in favour of the complainant regarding existence of legally recoverable debt. But, if an illegal consideration is relied upon by the complainant himself, then such presumption under section 139 of the Negotiable Instruments Act, cannot be raised at the initial stages also. It all depends upon the facts and circumstances of each case on the basis of the pleadings of the parties.

25. Section 138 of the Negotiable Instruments Act mandates that, there should be an existence of legally recoverable debt and in order to attract Section 138 of the Negotiable Instruments Act, the party has to plead with regard to the existence of legally recoverable debt. If he pleads with regard to the existence of the legally recoverable debt under section 138 of the Act, then only presumption under section 139 of the Act can be raised in favour of the complainant. If the complainant himself does not plead the existence of legally recoverable debt, then there is no question of raising any initial presumption in favour of the complainant. Therefore, even considering the provisions of Section 139 of the Negotiable Instruments Act, there is no question of accused rebutting the presumption unless the presumption is raised in favour of the complainant. If the court for any reason comes to the conclusion that the ingredients of Section 138 of the

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> *Negotiable Instruments Act, are not made out, the court cannot take cognizance of such matter, and for the purpose of calling the accused to appear before the court and contest the proceedings."*
>
> *10. Thus, it is evident that the respondent had filed the complaint on the allegation that the cheque given by the petitioner was dishonored on its presentation. This is the settled position of law that once issuance of cheque has been admitted by the accused then there lies a presumption under Section 139 of the 1881 Act unless contrary is proved that the holder of a cheque received the cheque of the nature referred to in Section 138 of the 1881 Act for discharge, in whole or in part, of any debt or any other liability. However, if the contract entered into between the parties in itself is void, then presumption for discharge of a legally enforceable liability does not arises. Hence, the impugned complaint and the summoning order fails on the touch stone of the law settled. Thus, this Court has no hesitation in holding that prosecution of the petitioner on the basis of the complaint is nothing but an abuse of the process of the Court."*
>
> (Emphasis supplied)

9. In ***Khaleel Khan P. Versus Sunil Kumar G.C., Criminal Petition No.4098 of 2019, decided on 04.11.2022***, the Karnataka High Court held as under:-

> *"2. The respondents herein have filed private complaints under Section 200 of Cr.P.C. against the petitioner for the offence punishable under Section 138 of the Act. The case of the respondents is that the petitioner herein represented to them that he is a very influential person and he is in a position to get them*

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jobs in the health department provided they pay a certain amount to him. Accordingly, the respondents paid certain amounts to the petitioner. However, as the petitioner was not able to procure them jobs as promised they insisted for refund of the said amounts and accordingly, the petitioner has issued a Cheque for Rs.2,00,000/- to the respondent in Crl.P.No.4098/2019, a Cheque for Rs.2,00,000/- to the respondent in Crl.P.No.4099/2019 and Cheques for Rs.4,00,000/- and Rs.6,000/- to the respondent in Crl.P.No.4101/2019. The said Cheques upon presentation have been dishonoured by the Bank. Hence, the respondents have filed private complaints against the petitioner herein under Section 138 of the Act read with Section 200 of Cr.P.C. The learned Magistrates in all the three cases have taken cognizance of the offence under Section 138 of the Act and issued process to the petitioner herein. Aggrieved by the same, the instant criminal petitions are filed.

3. The case of the petitioner is that he is not liable to pay any amount to the respondents as even presuming that the allegations made by the respondents are true, they do not constitute a legally enforceable debt and hence, he cannot be prosecuted for dishonour of the Cheques.

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6. Admittedly, in the instant cases, the transaction between the petitioner and the respondents is that the respondents paid bribe amount to the petitioner to get them jobs in the health department by using his influence. When he failed to do so, they sought for refund of the amounts paid by them and in turn the petitioner has issued Cheques which have been dishonoured.

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7. The question that arises for consideration in these petitions is whether the debt is legally enforceable or not.

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10. However, section 65 of the Indian Contract Act reads as under:

"65. Obligation of person who has received advantage under void agreement, or contract that becomes void.-When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

11. Under the said circumstances, the only aspect to be considered is that though it is a void contract, whether the liability of the petitioner is a legally enforceable debt or not.

12. The Hon'ble Supreme Court of India in Kuju Gollieries Ltd., v. Jharkhand Mines Ltd., And Others reported in AIR 1974 SC 1892 in paragraph No.6 has held as under:

> *"6. We are of the view that section 65 of the Contract Act cannot help the plaintiff on the facts and circumstances of this case. Section 65 reads as follows:-*
>
> *"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it".*
>
> *The section makes a distinction between an agreement and a contract. According to section 2 of the Contract Act an agreement which is enforceable by law is a contract and an*

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agreement which is not enforceable by law is said to be void. Therefore, when the earlier part of the section speaks of an agreement being discovered to be void it means that the agreement is not enforceable and it, therefore, not a contract. It means that it was void. It may be that the parties or one of the parties to the agreement may not have, when they entered into the agreement, known that the agreement was in law not enforceable. They might have come to know later that the agreement was not enforceable. The second part of the section refers to a contract becoming void. That refers to a case where an agreement which was originally enforceable and was, therefore, a contract, becomes void due to subsequent happenings. In both these cases any person who has received any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to the person from whom he received it. But where even at the time when the agreement is entered into both the parties knew that it was not lawful and, therefore, void, there was no contract but only an agreement and it is not a case where it is discovered to be void subsequently. Nor is it a case of the contract becoming void due to subsequent happenings. Therefore, section 65 of the Contract Act did not apply."

13. The agreements between the petitioner and the respondents are wherein all of them knew that the agreements were void when they were entering into it as the same were being entered into for illegal purpose and it is not a case where it was later discovered that the agreements were void or that the contract at a subsequent date became void. Under the said circumstances, as per the law laid down by the Hon'ble Supreme Court in the aforementioned decision, the respondents are not entitled to

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claim return of the advantage received by the petitioner herein. For the said reason, the debt owed by the petitioner to the respondents cannot be considered as a legally enforceable debt and the petitioner cannot be held guilty of offence punishable under Section 138 of the Act even if the allegations made in the complaints by the respondents are considered to be true."

(Emphasis supplied)

10. In ***P. Kulanthaisamy Versus K. Murugan & others, 2026 ACD 238***, the Madras High Court held as under:-

"*4. The case of the complainant is that the accused was earlier working in mechanical section of Tamil Nadu State Transport Corporation (hereinafter referred as 'TNSTC') depot at Virudhunagar and the complainant had acquaintance with one Madamuthu of Srivilliputtur, who retired after serving in the computer section of TNSTC depot, where the accused was working. The accused informed the complainant that he was holding important post in the Transport Corporation Labour Union and he is having good influence through Labour Union and that he would arrange conductor job to the complainant and demanded Rs. 3 lakhs for the same. The complainant believing the words of the accused had arranged and paid Rs. 3 lakhs on 10.02.2016 in the presence of the said Madamuthu at TNSTC depot Virudhunagar but the accused has failed to arrange the job, as agreed by him. When the complainant along with the said Madamuthu approached the accused several times and demanded to return the amount received by him, the accused agreeing to return the same had issued a cheque dated 31.12.2016 drawn on State Bank of India, Aruppukkottai Branch for discharging the amount due by him. When the*

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complainant presented the cheque on 02.01.2017, he was informed by the bank authorities that the cheque is an old and invalid one. When the same was informed to the accused, he issued another cheque dated 28.02.2017 for Rs. 3 lakhs drawn on State Bank of India, Virudhunagar Branch. When the said cheque was presented for collection, the same was returned dishonored for want of sufficient amount in the bank account of the accused. The complainant has then sent a legal notice dated 14.03.2017 directing the accused to pay the amount covered by the cheque but the accused having received the legal notice on 20.03.2017, neither sent any reply nor complied with the notice demand. Hence, the complainant was constrained to lodge the above complaint for the offence under Section 138 r/w 142 of the NI Act.

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7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 04.01.2018 by holding that the cheque in dispute was not issued for discharging the legally enforceable debt or liability and as such, Section 138 of the NI Act will not get attracted, acquitted the accused under Section 255(1) Cr.P.C. Challenging the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. The learned counsel appearing for the complainant would submit that the debt or liability under Section 138 of the NI Act would only mean the legally enforceable debt or other liability, that the accused admitted his liability during the course of cross-examination of P.W.1, that though the complainant has alleged that he gave the amount for getting a job, the present complaint was not filed on the basis of the said agreement but

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only on the basis of the cheque subsequently issued, which gives a different cause of action and moreover, the present complaint came to be filed only on the basis of the second cheque allegedly issued by the accused and not with respect to the first cheque which was returned as old and invalid and that the learned Magistrate, without considering the above aspects in proper perspective, has come to an erroneous decision that the cheque was not issued towards legally enforceable debt and acquitted the accused.

9. The learned counsel appearing for the accused would submit that Ex.P.1-cheque was not issued towards discharge of a legally enforceable debt and even according to the complainant, it was issued to repay money obtained by the accused for securing a job, which is opposed to public policy and that therefore, it does not constitute a legally enforceable debt and the accused cannot be convicted under Section 138 of the NI Act.

10. Considering the above submissions, the sole issue to be determined is whether the Ex.P.1-cheque for Rs. 3 lakhs issued by the complainant to the accused was towards the discharge of a legally enforceable debt or liability.

11. It is pertinent to note that the complainant in his complaint has specifically stated that he gave Rs. 3 lakhs to the accused for getting conductor job in TNSTC. The complainant, while deposing as P.W.1, would reiterate the complaint contentions and his witness P.W.2 would also reiterate the very same version that the amount of Rs. 3 lakhs was given to the accused for securing a job for the complainant. As rightly pointed out by the learned counsel appearing for the accused, such payment

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for securing Government employment would be considered a bribe and is opposed to public policy.

12. It is necessary to refer the legal maxim "in pari delicto potior est conditio possidentis" translates to "in equal fault, the condition of the possessor is better". This doctrine means when the parties to a dispute are equally at fault or equally favour for an immoral act, the Court will not assist either party and the one, who mainly possesses the property or benefits of the transaction, will retain it. This doctrine applies when both parties involved in a wrongful act or transaction are equally to blame and it must deter individuals from engaging in illegal or immoral activities by demonstrating that they will not receive help from the legal system if they are caught in their own fault. In India, this maxim is closely linked to the principles of equity, justice and good conscience and its application is primarily seen in void contracts, particularly those rendered void due to illegality or fraud.

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19. In light of the legal position, since the complainant's case is based on a specific claim that the money was given for securing a TNSTC job and the cheque was issued to repay this amount, this Court holds that there is no legally enforceable debt or liability. Consequently, Section 138 of the NI Act is not applicable. The impugned judgment acquitting the accused is perfectly legal and deserves no interference. Hence this Court concludes that the appeal is devoid of merits and is liable to be dismissed."

(Emphasis supplied)

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9. A perusal of the aforementioned judgments would reveal that where a contract has been arrived at between the parties which in itself is void then the presumption that the cheque was issued for the discharge of a legally enforceable debt does not arise. In the instant case, apparently, the respondent had paid Rs.2,20,000/- to the petitioner with a view to obtain employment for his brother. The cheque given by the petitioner purportedly returning the amount received cannot be said to be one which has been issued for the discharge of a legally enforceable debt as the contract between the parties itself is void and against public policy.

10. In view of the aforementioned discussion, I find considerable merit in the present petition and therefore, the same is accepted. The Complaint Case No.4146 of 2018 dated 21.09.2018 (Annexure P-1) registered under Sections 138, 142 & 143 of the Negotiable Instruments Act, the summoning order dated 13.10.2018 (Annexure P-2) passed by the JMIC, Karnal under Sections 138 of the NI Act and all consequential proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

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

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