

CRM-A-598-MA-2016 (O&M)

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

CRM-A-598-MA-2016 (O & M)

Date of Decision: 19.12.2019

Veena Kakkar

... Applicant

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Jalandhar, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on dishonour of cheque bearing No.000016 dated 19.01.2015, amounting to Rs.2,50,000/-.

The learned Judicial Magistrate Ist Class, Jalandhar, has recorded the following reasons to dismiss the complaint:

- (i) The complainant herself had no source of income except the pension of her husband (deceased) and at the time of advancing loan to the accused, she was just a housewife.
- (ii) No specific amount, which was advanced as a friendly

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loan to the accused has been mentioned by the complainant. The exact loan amount has not been mentioned by the complainant.

- (iii) The complainant has not produced on record any account statement or any other record pertaining to her saving in order to show that she had sufficient amount with her at the time of advancing such a huge amount as friendly loan.
- (iv) It is highly improbable and not a digestible fact that the complainant, who is a widow, would advance such a huge amount of Rs.14 lakh as friendly loan without any written document and in absence of any witness to the transaction.

The learned Magistrate has taken a reasonable and probable view on appreciation of evidence.

Thus, in view of the totality of the circumstances and the settled position of law, the case attempted to be built by the complainant, appears to be suffering from fatal infirmities so much so that it goes directly to the root of the case and shakes the very edifice on which the case of the complainant rests. It is also relevant to mention here that the criminal conviction entails enigmatic and stigmatic exposures and experiences and thus it becomes of paramount importance to demand evidence of unimpeachable character and of unambiguous nature.

Therefore, considering the above mentioned facts and legal positions, it would not be unjustified and completely misplaced to say that

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the complainant has miserably failed to prove if the impugned cheque has been issued against the discharge of any enforceable debt or liability. Preponderance of probabilities lies completely in favour of the accused. Further, the case of the complainant is required to rest on his own leg and the same cannot be allowed to be bypassed in a casual and cosmetic manner.

Learned senior counsel for the applicant, although, made sincere attempt, yet failed to draw the attention of this Court to any substantive error or perversity. Still further, the reasons which have been extracted above, appear to be probable and plausible.

Alongwith the present application, CRM-9960-2016 under Section 391 Cr.P.C. has been filed for leading the additional evidence by way of placing on record the documents Annexures A-1 to A-7 (colly.). However, learned senior counsel for the applicant has failed to point out that there exist sufficient grounds to return a finding of conviction against respondent No.2. Admittedly, the said documents were not produced by the applicant before the trial Court. Once an opportunity was availed by the applicant to lead the evidence and the evidence was led by her, she cannot be allowed to place on record these documents now before this Court. Therefore, the application for additional evidence stands dismissed.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed.

19.12.2019
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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