

CRM-A-2273-2019

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

CRM-A-2273-2019 (O & M)

Date of Decision: 12.12.2019

Raj Kumar

... Applicant

Versus

Rahul

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-30007-2019

Heard.

For the reasons as mentioned in the application, the same is allowed and the delay of 45 days in filing the application seeking leave to appeal is condoned.

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

Proceedings were initiated on account of dishonour of cheque bearing No.023016 dated 10.04.2017, for an amount of Rs.3,00,000/-, drawn on Axix Bank, Karnal.

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The learned Judicial Magistrate has recorded the following reasons to dismiss the complaint:

- (i) The complainant in his cross-examination admitted that he had nowhere mentioned as on which date and for what purpose, he had advanced the said amount to the accused.
- (ii) The complainant has not disclosed about his profession and source of income. Therefore, financial condition of the complainant is not such as to advance such a huge amount of money i.e. Rs.3,00,000/-.
- (iii) The complainant stated in his cross-examination that he had advanced the money to the accused without any writing proof.
- (iv) The complainant further clearly stated that neither any writing nor any receipt was executed regarding the advancement of loan.

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

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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 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 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.

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.

12.12.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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