

CRM-A-2189-2019 (O & M)

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

CRM-A-2189-2019 (O & M)

Date of Decision: 19.12.2019

Om Parkash

... Applicant

Versus

Gig Raj Verma

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Yogesh Saini, Advocate, for the applicant.

HARNARESH SINGH GILL, J.

CRM-29557-2019

Heard.

For the reasons as mentioned in the application, the same is allowed and the delay of 70 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, Chandigarh, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on dishonour of cheque bearing No.020932 dated 12.02.2017, for an amount of Rs.4,80,000/-, drawn on Central Bank of India.

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

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- (i) There is nothing on record to prove that the complainant had ever advanced an amount of Rs.4,80,000/- to the accused.
- (ii) The daughter of accused had taken the loan of Rs.1,00,000/- from Vandana, who is wife of the complainant, and his daughter had given two blank signed cheques to her as security after taking the same from the accused. The complainant has nowhere denied that Vandana is not his wife. Rather in his cross-examination, he had admitted the said fact.
- (iii) The issuance of cheques in favour of Vandana makes it probable that the complainant had access to the cheques which were with Vandana, and he had opportunity to misuse the same as a complaint had been moved by the accused to SSP in this regard.

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

As per the conclusion drawn by the learned Magistrate, complainant could not place on record any document to prove that amount was advanced at any stage. Also respondent/accused move an application to the SSP (Ex.D2) that cheque in question has been misused by the applicant/complainant. DW-2, Joginder Singh has proved the complaint on record. This shows that there was some loan transaction between Babita (daughter of respondent/accused) and Vandana (wife of applicant/complainant) and having access to the said cheque,

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applicant/complainant filed the present complaint.

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 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.

19.12.2019

parveen kumar

Note: Whether speaking/reasoned

Whether reportable

(HARNARESH SINGH GILL)

JUDGE

: Yes/No

: Yes/No