

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-837-MA of 2014 (O&M)
Date of Decision: 17.12.2019

Rajesh Kumar

.....Applicant

Vs.

Raj Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Amit Kohar, Advocate
for the applicant.

None for the respondent.

HARNARESH SINGH GILL, J.

Special leave to appeal has been sought against the judgment of acquittal dated 20.3.2014 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, thereby dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on dishonour of cheque bearing No. 753479 dated 4.7.2012 for an amount of Rs. 95,000/- drawn on Punjab and Sind Bank, Banch Damla.

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

- 1) The complainant has not disclosed anything about the date of loan or the date on which loan was given to the accused.
- 2) The complainant has admitted in his cross-examination

that when money was given by him to the accused nothing was reduced into writing between the parties and no witness was present at the time of advancement of loan and handing over of the cheque by the accused to the complainant.

- 3) The purpose of advancement of loan has also not been mentioned either in the examination-in-chief or in the complaint.
- 4) The complainant has himself stated in his cross-examination that he does not even know what is the source of earning of the accused.
- 5) The withdrawal and deposit by the complainant appears to have been made for some other purpose. There is no explanation from the complainant regarding huge deposit and immediate withdrawal by him.
- 6) The complainant has stated to the effect that money was given by him to the accused in April 2012 while the withdrawal in document Ex. CW-2/B is of the month of February 2012.

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

Thus, in view of the totality of circumstances and the settled legal positions as discussed above, 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 won't be unjustified and completely misplaced to say that the complainant has miserably failed to prove if the impugned cheque had 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 its 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 attention of the Court to any substantive error or perversity. Still further, the reasons which have been extracted above, appear to be probable and plausible. Hence, this Court is not inclined to interfere with the judgment of acquittal passed by the trial Court.

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

(HARNARESH SINGH GILL)
JUDGE

December 17th, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes