

CRM-A-2195-MA-2016

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

**CRM-A-2195-MA-2016 (O & M)
Date of Decision: 10.02.2020**

Mahesh Kumar

... Applicant

Versus

M/s Ujala Cooperative Labours Construction Society Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sunny Tyagi, Advocate for
Mr. Vikrant Hooda, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-39333-2016

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 20 days in filing the application seeking leave to appeal, is condoned.

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A Coordinate Bench, on 05.03.2019, adjourned the matter, subject to deposit of costs of Rs.2,000/- with the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh.

As per the office report, the costs of Rs.2,000/- has not been

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deposited by the applicant.

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

Proceedings were initiated on account of dishonour of cheque, bearing No.208512 dated 25.07.2012, amounting to Rs.8,50,000/-, drawn on The Jhajjar Central Cooperative Bank Ltd. Branch Bahadurgarh.

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

- (i) The contents of the complaint and affidavit Ex.CW 1/A of the complainant show that the inter-lock tiles had been supplied to the accused persons as per the requests and orders. But surprisingly, not even a single specific date, month or year of any such transaction had been mentioned by the complainant. No bill/invoice and bilty pertaining to any such transaction had been tendered by the complainant to show as to how many tiles and at what price, had been purchased by the accused persons.
- (ii) The complainant belongs to businessman fraternity and accordingly, it was expected of him that he must be maintaining day book or ledger account of the accused in ordinary course of his business. In absence of day book and ledger account of the accused, neither the complainant could have determined the liability of the

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accused nor the court could do the same. In absence of the complete books of account, the amount due towards the accused on different occasions could not be ascertained and accordingly, it could not be said that the amount of Rs.8,50,000/- was due towards the accused on 25.07.2012.

- (iii) It has been clearly established that the cheque was definitely not supported by the consideration of Rs.8,50,000/- on date of its issuance.

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

As per the conclusion drawn by the learned Magistrate, the onus was shifted upon the complainant and he was required to prove his case beyond all shadow of reasonable doubt, but as discussed above, in absence of bill/invoice, bill and books of account required to be maintained by him in ordinary course of business, he could not establish/prove his case beyond all shadow of reasonable doubt.

The findings have been given by the learned trial Court after appreciating the evidence in right and proper perspective. In no way, these can be held as perverse or against the evidence and law. Nothing has been pointed out as to how the findings are perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below.

Furthermore, no particulars of the transaction of any type have

been mentioned as to on which date, month or year and how much tiles have

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been given to the accused; whether any receipt was taken; whether any bill was issued and as to how these tiles were transported and at which site. There is also nothing as to when the demand was raised by the complainant for the payment of money etc. As already discussed, there is no document on record to show this transaction between the parties.

The defence version raised by the accused in this case is probable one which is duly supported from the case of the complainant itself. The presumption under Section 139 of the NI Act has been duly rebutted by the accused. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

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.

The applicant is directed to deposit the costs of Rs.2,000/- within a period of one month in compliance of the order dated 05.03.2019.

10.02.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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