

CRM-A-1030-MA-2014

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

**CRM-A-1030-MA-2014 (O & M)
Date of Decision: 16.01.2020**

Subhash Chander Sharma

... Applicant

Versus

Ravinder alias Babli

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: None.

HARNARESH SINGH GILL, J.

CRM-19752-2014

This is an application under Section 5 of the Limitation Act for condonation of delay of 634 days in filing the application seeking leave to appeal.

It is mentioned in the application that the complaint filed by the applicant-complainant was dismissed on 09.08.2012 and thereafter, the applicant had filed an appeal before the learned Sessions Judge, Jhajjar, well within the period of limitation, but the said appeal had been dismissed vide order dated 02.06.2014, being not maintainable. The delay had occurred due to filing of the appeal before the wrong forum.

Keeping in view the fact that the applicant had been wrongly pursuing the appeal before the learned Sessions Judge, the present

application is allowed and the delay of 634 days in filing the application

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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, Bahadurgarh, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act').

Proceedings were initiated on account of dishonour of cheques, bearing Nos.517929, 517930, 517931, 517932 and 517933 dated 11.07.2008, amounting to Rs.5,00,000/- each.

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

- (i) It is claimed by the complainant that the accused had entered into an agreement to sell dated 15.04.2008 (Ex.P-1) by which he had assured the complainant for the purpose of a plot and complainant had also handed over Rs.25,00,000/- to him in the presence of witnesses, but it came in the cross-examination of PW 1 Subhash Chander that the complainant had not seen or inquired into about any particular plot.
- (ii) In his cross-examination, PW4 Maha Singh admitted that it is correct that the ink used to fill up the cheques, was different. This witness could not tell as to who had filled up these cheques. PW 2 and PW 3 are formal witnesses, who proved the fact of dishonour of cheques in question.
- (iii) The complainant himself admitted that the cheques in

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question were given by the accused to the complainant for the sake of safe dealing. The accused had denied the execution of agreement dated 15.04.2008.

- (iv) The complainant has not been able to prove the case beyond reasonable doubt that the cheques in dispute had been issued by the accused to the complainant in discharge of a legally enforceable debt.

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

As per the conclusion drawn by the learned Magistrate, the complainant could not prove on record that the cheques in dispute had been issued by the accused to him in discharge of a legally enforceable debt and the accused had also denied the execution of agreement dated 15.04.2008. The complainant himself admitted that the cheques in question had been given by the accused to him for the sake of safe dealing. It is true that if the cheques are used for a certain contract/agreement and not towards discharge of any debt or any other liability, the offence under Section 138 N.I.Act, is not attracted.

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 cheques had been issued against the discharge of any legally 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 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.

16.01.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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