

CRM-A-2644-MA-2018

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

CRM-A-2644-MA-2018 (O & M)
Date of Decision: 06.01.2020

Lakhminder Singh

... Applicant

Versus

Sunrise Trading Co. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sushil Bhardwaj, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-42819-2018

Heard.

For the reasons as mentioned in the application, the same is allowed and the delay of 08 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, Yamuna Nagar, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on account of dishonour of cheque bearing No.284057 dated 16.03.2016, for an amount of Rs.4.50 lakh, drawn on Punjab National Bank, Branch Radaur, District Yamuna Nagar.

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

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- (i) As per the evidence on record, neither the complainant knows much about accused nor he has any written acknowledgment/pronote/receipt regarding lending money to the accused.
- (ii) The accused was not residing in village Sandhala, nor working as a partner at M/s Sun Rise Trading, Radaur, District Yamuna Nagar, at the time of alleged advancement of money to him. The fact that the accused had been a partner in M/s Sun Rise Trading since 2009 till 2011, is established.
- (iii) The complainant knew at the time of filing of complaint that the accused was not residing in village Sandhala, Radaur, rather residing in Tarawari, District Karnal. It is proved on record that the accused has not been living in village Sandhala or in Yamuna Nagar since the year 2012-13 and, therefore, the version of complainant of having lent money to the accused in October, 2015, appears highly suspicious.

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 place on record that the accused was residing in village Sandhala at the time of alleged advancement of loan to him and there is nothing on record to prove that the complainant knows much about the accused nor he has any written acknowledgment regarding lending

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Rs.4.5 lakhs to the accused.

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.

06.01.2020

parveen kumar

Note: Whether speaking/reasoned

Whether reportable

(HARNARESH SINGH GILL)
JUDGE

: Yes/No

: Yes/No