

CRM-A-1286-MA-2014

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

CRM-A-1286-MA-2014 (O &M)

Date of Decision: 05.02.2020

Amandeep Singh, Proprietor A.S. Associates Hub

... Applicant

Versus

Sukhjinder Singh, Proprietor S.S.Travels

... Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. R.K.Shukla Advocate, for the applicant.

**HARNARESH SINGH GILL, J.**

**CRM-25038-2014**

Heard.

For the reasons as 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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Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Patiala, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on dishonour of cheque bearing No.502934 dated 09.05.2012, for an amount of Rs.50,000/-, drawn on Bank of Baroda, Sangrur Branch, Sangrur.

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

- (i) The complainant, in his cross-examination, admitted that the accused had also given him cheque, bearing No.502933, for the amount of Rs.50,000/-. He had also admitted regarding the payment of cheque No.502933. The payment in that cheque had been received by the complainant through draft and notice had also been served upon the accused regarding the dishonour of the said cheque. The complainant also admitted that he had no document regarding any contract vide which the accused had borrowed tickets from him on credit basis.
- (ii) Furthermore, admission was made by the complainant that after first cheque No.502933, there had been no dealing between his firm and accused. The complaint was filed regarding cheque No.502934, whereas the complainant, in his cross-examination, admitted that he had no dealing with the accused after issuance of cheque No.502933.
- (iii) During cross-examination, the documents had been brought on record by the complainant, but the same were neither signed by him nor the said documents were record of any bank/other authority. He further admitted, in his cross-examination that except cheque

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Nos.502932 and 502933, there had been no new transaction of the cheque between him and accused, but the present complaint had been filed regarding cheque No.502934.

- (iv) The cheque No.502934 regarding which the present complaint had been filed, was not given to him on 09.05.2011. However, in the complaint, it was averred that accused had issued a cheque No.502934 dated 09.05.2012 to him. DW 1 Sukhwinder Singh deposed that the complainant had already received payment of Rs.50,000/- through demand draft dated 10.05.2012. However, the payment was made to the complainant on 10.05.2012 by demand draft from the bank account of his wife-Sandeep Kaur through cheque No.89981.

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

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.

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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.

05.02.2020  
parveen kumar

**(HARNARESH SINGH GILL)**  
**JUDGE**

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