

CRM-A-2085-MA-2015

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

**CRM-A-2085-MA-2015 (O & M)
Date of Decision: 11.02.2020**

Mihan Singh

... Applicant

Versus

Rakesh Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rakesh Bakshi, Advocate,
for the applicant.

Mr. G.C.Shahpuri, Advocate,
for the respondent.

HARNARESH SINGH GILL, J.

CRM-42370-2015

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 223 days in filing the application seeking leave to appeal, is condoned.

CRM-A-2085-MA-2015

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.

CRM-A-2085-MA-2015

Proceedings were initiated on account of dishonour of cheque, bearing No.534768 dated 08.10.2012, amounting to Rs.4,02,000/-, drawn on Oriental Bank of Commerce, Branch Yamuna Nagar.

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

- (i) Though the story of the complainant is that he had deposited the money paid by him to accused in his account, yet no such record from the bank had been produced on file to prove the contention that the money had been, in fact, paid by the complainant to accused.
- (ii) The complainant himself stated in his deposition before the trial court that he never had any personal negotiations with the accused, whereas the same had taken place with Dharampal. He further stated that he had come in contact with the accused through Dharampal. However, said Dharampal had not been examined in the present case.
- (iii) The complainant does not know when the cheque in question was given by the accused to him. He also does not know as to where the office of the accused was located.
- (iv) The story of the complainant that the money given by him to the accused, belonged to his relative, but he had not got examined any of his relatives to corroborate his stand.
- (v) The complainant himself stated that he was a labourer

CRM-A-2085-MA-2015

and even his children were labourer and they did not own even any agricultural land. He further stated that the money given by him to the accused, had belonged to his relative and not to him. Under such circumstances, the financial capacity of the complainant also became doubtful to the extent that he could have given a huge sum of Rs.4,02,000/- to the accused for the purpose of installation of mobile tower.

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 had miserably failed to prove his financial capacity of lending such a huge amount. Moreover, he himself admitted that he was a labourer and the money given by him to the accused, had belonged to his relative and not to him. But he had not got examined any of his relatives to corroborate his stand. Moreover, he had not produced any evidence to prove the liability of 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.

CRM-A-2085-MA-2015

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 that 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 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.

11.02.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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