

CRM-A-4-MA-2017

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

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Date of Decision: 26.02.2020

Punjab Agricultural Development Bank Ltd.

... Applicant

Versus

Sukhdev Singh

... Respondent

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

Present: Mr. I.S.Mann, Advocate and  
Mr. Harsimrat Singh, Advocate,  
for the applicant.

**HARNARESH SINGH GILL, J.**

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Sri Muktsar Sahib, dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on account of dishonour of cheque bearing No.087637 dated 03.04.2015, amounting to Rs.1,75,000/-, drawn on Punjab National Bank, Bhagsar, Sri Muktsar Sahib.

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

- (i) In the entire complaint, the bank has not stated anywhere as to how much loan had been advanced to the accused. This fact is also missing in the evidence led by the complainant.

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- (ii) The complainant-bank relied upon the documents i.e. Ex.C5, loan application, and Ex.C-6, copy of ledger for the purpose of showing the principal amount, standing due against the accused, and copy of another part of the same ledger where the interest portion of the loan amount is alleged to have been mentioned. There was no other document to prove the fact that the complainant-bank had advanced any loan to the accused.
- (iii) There is no statement of loan account placed on file to prove the fact that the loan was advanced to the accused. In the absence of any document in this regard, the disbursement of the loan amount is not proved.
- (iv) The cheque allegedly issued by the accused, is to be drawn on Punjab National Bank. However, there is no memo of the said bank nor any stamp or entry made by the bank of the accused. The memo is of only of the banker of the complainant and not of the accused.
- (v) The complaint has not been filed by the appropriate person, as complainant was not authorized to file the same. Another authority letter placed on file as Ex.C9 is also not appropriate one as the same can only be issued by the Board of Directors and not by a person who himself has been authorized to pursue the

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pending cases.

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 bank has not stated anywhere as to how much loan had been advanced by the bank to the accused and there is no statement of loan account placed on the file to prove that in fact, the loan had been advanced to the accused. Even the complainant was not authorized to file the complaint.

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 it goes directly to the root of the case and shakes the very edifice on which the case of complainant rests. It is also relevant to mention here that the criminal conviction entails enigmatic and stigmatic exposures and experiences and thus it become 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 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 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

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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.

26.02.2020

parveen kumar

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

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