

CRM-A-1692-2019

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

CRM-A-1692-2019 (O & M)
Date of Decision: 24.02.2020

Abdul Rashid

... Applicant

Versus

Mohammad Salim

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Anil Kumar Garg, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

Special leave to appeal has been sought against the judgment dated 18.03.2019 passed by the learned Judicial Magistrate Ist Class, Malerkotla, vide which the respondent was acquitted under Section 193 IPC.

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

- (i) In the present case, it is not disputed that the accused had furnished an affidavit at the time of furnishing surety bonds to the effect that he had never stood surety in any other case. In fact, he had given surety bonds earlier too, but he had never given the affidavit being witness before the court. Therefore, the affidavit tendered by the accused as surety could not be treated as affidavit given by him as a witness.

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- (ii) Until and unless, an affidavit has been tendered as evidence by a witness before the Court, the question of committing offence of giving false evidence does not arise.
- (iii) In the present case, *mens rea* on the part of the accused is totally absent because he stood surety for an amount of Rs.20,000/- only and although he had given surety of his house, which property already stood surety in the earlier case but the value of his house was more than Rs.2 lakh and apart from the house, he had also given surety of his household articles having value of Rs.50,000/-. He had given surety of his house just for Rs.10,000/- only in the earlier litigation. So value of the house of accused was still in excess even if it is attached and sold in both the cases in case of committing default by that accused.

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

As per the conclusion drawn by the learned Magistrate, the affidavit tendered by the accused as surety cannot be treated as affidavit given by him as a witness. Until and unless, an affidavit has been tendered as evidence by a witness before the Court, the question of committing offence of giving false evidence does not arise. In the present case, *mens rea* on the part of the accused is totally absent.

Thus, in view of the totality of the circumstances and

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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 his case. 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 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.

24.02.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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