

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

Date of decision: 10.02.2020

CRM-A-1531-2019 (O&M)

Ravinder Kumar

...Petitioner

Versus

Naresh Kumar and another

...Respondents

CRM-A-1656-2019 (O&M)

Ravinder Kumar

...Petitioner

Versus

Naresh Kumar and another

...Respondents

CRM-A-1813-2019 (O&M)

Ravinder Kumar

...Petitioner

Versus

Naresh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Anshul Sharma, Legal Aid Counsel, Advocate,
for the applicant.

HARNARESH SINGH GILL, J. (ORAL)

CRM-23094-2019 in CRM-A-1531-2019

Heard.

In view of the grounds mentioned in the application, the same is
allowed and the delay of 64 days in filing the application seeking leave to
appeal, is condoned.

CRM-23323-2019 in CRM-A-1656-2019

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 65 days in filing the application seeking leave to appeal, is condoned.

CRM-23526-2019 in CRM-A-1813-2019

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 64 days in filing the application seeking leave to appeal, is condoned.

CRM-A-1531-2019**CRM-A-1656-2019****CRM-A-1813-2019**

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate 1st Class, Mohali, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881, acquitted the respondent of the charges.

Proceedings were initiated on account of dishonour of cheques, bearing No. 102558 dated 05.11.2011, No. 102559 dated 08.11.2011 and 102560 dated 11.11.2011 each amounting to Rs. 25,000/- drawn on Bank of Baroda, Phase-9, SAS Nagar, Mohali.

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

- (i) As per case of the complainant, he entered into an agreement to sell on 16.10.2008 for the sale of House No. 3003-A, Sector 52, Chandigarh, which was in the

ownership of accused but the complainant has failed to produce even the copy of the alleged agreement to sell executed between the parties. Further, the complainant has failed to produce any document to show that an amount of Rs.11,00,000/- was paid by him to the accused in lieu of the agreement to sell dated 16.10.2008.

- (ii) The complainant has failed to show as to why he had accepted Rs.75,000/- through three cheques where an amount of Rs.11,00,000/- was pending towards him as claimed by him in the complaint.
- (iii) The complainant has failed to show any bank record or statement of accounts which can show that he actually paid Rs.11,00,000/- as stated by him to the accused on the dates claimed by him in lieu of the agreement to sell.
- (iv) No witness of the alleged agreement to sell has been produced by the complainant in support of his case. In absence of any evidence, the Court finds that the version of the complainant qua the execution of agreement to sell between the parties cannot be relied upon when it has been denied by the 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 complainant had miserably failed to show any record or statement of accounts which can show that he actually had paid Rs. 11,00,000/- as stated by him to the accused on the dates claimed by him in lieu of the agreement nor any witness of the alleged agreement to sell has been produced by the complainant.

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 cheques have 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 appeals. Therefore, finding no merit in the applications, the same are dismissed.

(HARNARESH SINGH GILL)
JUDGE

10.02.2020
Mangal Singh

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No