

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2387-MA of 2017 (O&M)
Date of Decision: 08.01.2020

Manjit Singh Khera

.....Applicant

Vs.

Onkar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. L.M.Gulati, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

Special leave to appeal has been sought against the judgment of acquittal dated 28.8.2017 passed by the learned Judicial Magistrate Ist Class, Amritsar, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short).

Proceedings were initiated on account of dishonour of cheque bearing No. 061344 dated 24.9.2014, for an amount of Rs. 6,15,000/-, drawn on HDFC Bank Ltd., 100 Feet Road Branch, Amritsar.

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

- (1) During cross-examination, the complainant failed to disclose the date, month and year of the alleged advancement of loan.
- (2) The complainant admitted that on 24.7.2014, on the statement of present accused, one FIR bearing No. 180

under Section 306/34 IPC was registered against the son of the complainant. So the story of the complainant that he had given friendly loan to the accused and his mother is not believable.

(3) On demand the present cheque in question which is dated 24.9.2014 has been issued by the accused in favour of complainant. When the complainant himself admitted in his cross-examination that he never met accused after 24.7.2014 then it is not believable that the accused handed over the cheque in dispute to the complainant on 24.9.2014.

(4) The complainant failed to bring on record and prove any document of the alleged source of Rs. 6,15,000/-. No bank statement or copy of any passbook was placed on the file from which it can be inferred that the complainant was able to advance such a huge amount to 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 failed to disclose the date, month and year of the alleged advancement of loan and remained silent on this and one FIR was also got registered against the son of complainant on the basis of the statement made the accused and one cheque was also issued in favour of complainant but the complainant himself admitted that he never met accused after 24.7.2014 then his version is not believable that he advanced money to the accused.

The complainant also failed to prove on record any document of the alleged

source of Rs. 6,15,000/-. No bank statement or copy of passbook was placed on record by the complainant to prove from where he got that huge amount. Moreover, the accused successfully rebutted the presumption under Section 139 of the Act and the complainant has miserably failed to prove that the accused had issued the cheque in question in discharge of his legally recoverable debt/liability.

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 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.

(HARNARESH SINGH GILL)
JUDGE

January 08, 2020

Gurpreet

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No