

CRM-A-10877-MA-2018

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

**CRM-A-10877-MA-2018 (O & M)
Date of Decision: 15.01.2020**

Gurcharan Singh

... Applicant

Versus

Jagjeet Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ravi Gakhar, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-45844-2018

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 09 days in filing the application seeking leave to appeal, is condoned.

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

Proceedings were initiated on account of dishonour of cheque, bearing No.105400 dated 23.09.2016, amounting to Rs.23,94,700/-, drawn

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on State Bank of India, Branch Ponta Sahib.

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

- (i) The story of the complainant that he had advanced such an enormous loan of Rs.23,94,700/- to the accused, is unsupported by any material leave alone any documentary evidence that any such loan transaction had ever taken place.
- (ii) The complainant himself admitted that he was under debt. He specifically stated during his cross-examination that he had earlier taken a loan to the tune of Rs.5 lakh from the Union Bank of India and that amount was still outstanding. The aforesaid admission on the part of the complainant, itself, throws the light upon the fact that he was not in a financial capacity to have advanced such a huge amount to the accused.
- (iii) No evidence was produced by the complainant to prove his financial liability to raise such a huge amount. The complainant, who was himself in debt, could not produce or prove his financial viability to raise such a huge amount, which was alleged to have been advanced 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

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complainant had miserably failed to prove his financial capacity of lending such a huge amount. Moreover, he himself admitted that he was under the debt. He had neither produced any evidence to prove the liability of the accused nor proved the source of raising such a huge amount to 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.

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

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to file appeal. Therefore, finding no merit in the present application, the same is dismissed.

15.01.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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