IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1956-MA-2018 (O & M)
Date of Decision: 24.02.2020

Ravinder Singh Lamba

... Applicant

Versus

Ashok Kumar Sehgal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sharwan Sehgal, 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, Ludhiana, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Proceedings were initiated on account of dishonour of cheque No.352799 dated 10.01.2013, amounting to Rs.40,000/-, cheque No.369249 dated 22.01.2013, amounting to Rs.25,000/-, cheque No.374721 dated 10.02.2013, amounting to Rs.30,000/- and cheque No.374722 dated 25.02.2013, amounting to Rs.30,000/-.

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

(i) In his cross-examination, the complainant stated that the accused had purchased 500 bags of cement from him for

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2020.02.26 16:50
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which they had issued the cheques in question, but he had failed to place on file the stock register or the purchase bill for the said cement bags from the manufacturer.

(ii) The bills or invoices were never produced on file and, therefore, it was highly improbable that four cheques of different denominations had been issued by the accused to the complainant for the payment of costs of the building material.

(iii) No date, month or year of the purchase was mentioned by the complainant in his complaint, affidavit or legal notice. Therefore, the period of transaction between the complainant and accused is uncertain. Even the account statement of the complainant (Ex.C-1) did not show any transaction in the name of the accused.

(iv) The complainant failed to prove his case against the accused that the cheques in question had been issued in discharge of their liability by the accused.

(v) There was nothing on record to prove that the cheques in question had been issued by the accused in favour of the complainant in discharge of their legally enforceable debt.

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 has miserably failed to prove his case that the cheques in

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question had been issued by the accused in discharge of their legal liability. Even the bills or invoices was not produced on the file. No date, month or year of the purchase was mentioned by the complainant in his complaint, affidavit or legal notice. Moreover, the complainant did not lead any evidence to prove the liability of 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 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 cheques 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 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.

Moreover, there is a delay of 134 days in filing the application

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seeking leave to appeal. Learned counsel for the applicant has failed to show any cogent and convincing reason to condone the delay of 134 days in filing the application seeking leave to appeal.

From the above, I do not find any ground to condone the delay in filing the application seeking leave to appeal and grant special leave to file appeal. Therefore, finding no merit in the present applications, the same are dismissed.

24.02.2020 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

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

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