

CRM-A-261-2019

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

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Date of Decision: 06.04.2022

Manish Kumar

... Applicant

Versus

Seema and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Harmanpreet Kaur, Advocate,
for the applicant.

HARNARESH SINGH GILL, J. (Oral)

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

Proceedings were initiated on dishonour of cheque bearing No.198635 dated 22.07.2015, for an amount of Rs.40,000/-, drawn on State Bank of India.

Learned counsel for the applicant submits that the respondent-accused had not denied her signatures on the cheque in question and, thus, the trial Court has wrongly drawn a conclusion while dismissing the complaint filed by the applicant.

I have heard the learned counsel for the applicant.

The learned trial Magistrate has recorded the following reasons

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to dismiss the complaint:

- (i) No date of advancing the amount was mentioned by the complainant. During his cross-examination, the complainant stated that he did not remember the date on which he had withdrawn the amount from the bank and advanced the same to the accused.
- (ii) There was no documentary or oral evidence available on record with regard to the transaction except the interested testimony of the complainant. The transaction in question and the source of income of Rs.40,000/- were not proved by the complainant.

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

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.

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.

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Learned counsel for the applicant, although, has made sincere attempt, yet failed to draw the attention of this Court to any substantive error or perversity in the judgment passed by the trial Court. 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.

06.04.2022
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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