In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.37839 of 2013

and

Criminal Misc. No.A-652-MA of 2013

.....

Date of decision:22.12.2015

Gentle Babu

...Applicant

v.

Naresh

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

**.....**

Present: Mr. Sarfraj Hussain, Advocate for the applicant.

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**Inderjit Singh, J.**

Cr. Misc. No.37839 of 2013:

For the reasons mentioned in the criminal miscellaneous application, the delay of 355 days in filing the present criminal miscellaneous application for leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-652-MA of 2013:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Naresh-respondent seeking grant of leave to file appeal against the impugned judgments of the Courts below acquitting the accused/respondent.

It is mainly stated in the application that the accompanying appeal is being filed against the judgments of the Courts below, which is likely to succeed on the grounds mentioned therein. There is a *prima facie* case in favour of the applicant and the learned trial Court has overlooked the evidence on record and the settled legal position. It is stated that great injustice has been done to the applicant as huge amount has been duped by the respondent. It is also stated that the learned trial Court has wrongly acquitted the accused/respondent. Therefore, it has been prayed that the leave to file appeal be granted.

I have heard learned counsel for the applicant and have gone through the record specially the judgment dated 10.5.2012 passed by the learned Judicial Magistrate Ist Class, Gurgaon.

From the record, I find that a criminal complaint was filed by Gentle Babu against Naresh under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act'). It is stated in the complaint that the complainant is working as a Property Dealer and in the course of his dealing and being previous villager and accused became in friendly terms with him, in the month of December 2008, the accused approached the complainant for a friendly loan of ₹21 Lakhs to purchase land. By seeing the previous record and friendly relations, the complainant extended a loan of ₹21 Lakhs in the month of December 2008 to the accused. While taking loan, the accused promised to return the same in the month of July 2009 and in discharge of his liability towards loan amount he issued three cheques bearing No.011961 dated 22.7.2009, No.011962 dated 24.7.2009 and No.011963 dated 26.7.2009 for ₹7 Lakhs each. On presentation, these cheques were returned with remarks "insufficient funds". Legal notice was given. When the amount was not paid, then the complaint was filed.

The accused took the plea that he did not borrow any sum of money from the complainant. He issued blank cheques to the complainant as security for other property transactions. He admitted the dishonour of cheques with the remarks "funds insufficient" and denied receiving any legal notice. He stated that the case is false and fabricated and there is no liability or debt on him at the time of issuing cheque.

The learned Judicial Magistrate Ist Class on the basis of evidence held that the complainant stated that cheque was produced in the bank twice, but there is only one stamp on the back side of the cheque showing that it was presented only once. It is also held by the learned trial Court that CW-1-complainant in cross-examination has stated that the money was given in lieu of some land which was to be given by the accused, but in the complaint it is mentioned that money was given as a friendly loan, which is again a contradiction. Thirdly, the complainant stated that he took ₹21 Lakhs from one of his friends, but that friend was not examined in evidence. No written agreement took place between the parties in lieu of the amount given to the accused. ₹21 Lakhs is a big amount and no person can give such a big amount without any written agreement/document. It is held by the Court below that the complainant failed to prove that cheques were issued in discharge of the money. The Court below also held that the accused admitted vide his separate statement on 23.4.2011 which, in no way, specifically admitted the liability of the cheque amount. Otherwise also, such a huge amount of ₹21 Lakhs cannot be given by a person without executing any document. The complainant is a property dealer. He has not produced the account books to show the lending of this amount of ₹21 Lakhs. Even if it is taken that the accused had taken the amount for giving some land to the complainant, then as to why the agreement to sell etc. was not executed. There is no document to show that this amount had been withdrawn from any bank account. The fact that the complainant borrowed ₹21 Lakhs to give it a friendly loan to another person also creates doubt in the version of the complainant. The findings given by the learned trial Court in the judgment dated 10.5.2012 are correct while appreciating the evidence in right perspective. In no way, the reasoning given by the trial Court can be held as perverse or against the evidence or law. Aggrieved against the judgment of acquittal of the trial Court, the complainant has filed appeal before the learned Sessions Judge, Gurgaon, who vide judgment dated 19.7.2013 dismissed the same on the ground of non-maintainability and ordered that there is no necessity to decide the appeal on merit.

The judgments passed by the Courts below are correct, as per evidence and law and these do not require any interference from this Court.

Therefore, from the above, I do not find any ground to grant leave to file appeal. Hence, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

December 22, 2015. **(Inderjit Singh)**
**Judge**

*hsp*