In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.20146 of 2015
and
Criminal Misc. No.A-1029-MA of 2015

.....

Date of decision:28.8.2015

Pritpal Singh

...Applicant

v.

Rakesh Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashish Bansal, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.20146 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 48 days in filing the criminal miscellaneous application for grant of leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1029-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rakesh Kumar for grant of leave to appeal against the judgment dated 19.11.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act').

It is mainly stated in the application that against the order of acquittal dated 19.11.2014, an appeal is being filed and as per the grounds of the appeal it is likely to be succeeded. It is also stated that the complainant has proved the ingredients of Section 138 of the NI Act The accused/respondent has failed to rebut the presumption under Section 139 of the NI Act or any kind of fraud. It is prayed that leave to appeal against the order of acquittal dated 19.11.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar may be granted.

I have heard learned counsel for the applicant and have gone through the record.

The brief facts of the case are that Pritpal Singh-complainant filed complaint against Rakesh Kumar under Section 138 of the NI Act on the ground that the accused raised a loan of ₹15,000/- from him on 13.1.2006 for his business purposes and in order to discharge this liability, he had issued cheque bearing No.101366 dated 17.7.2006 for a sum of ₹10,700/- in favour of the complainant drawn on UCO Bank Extension Counter, Model House, Jalandhar, with the assurance that the same will be honoured on presentation, but it was returned back dishonoured vide memo dated 27.12.2006 with remarks "account closed". Upon this, the complainant got issued a legal notice dated 18.1.2007 through registered post, but no payment was made, hence the complaint was filed.

On the other hand, version of the accused/respondent is that no such loan was ever taken by him from the complainant. Rather, a blank signed cheque was given to the complainant as guarantee in one earlier transaction wherein the daughter of the accused, namely, Reena had got financed one Refrigerator from the complainant's firm known as M/s Singh Finance Corporation, which had already been repaid and no loan as alleged by the complainant was taken by the accused. It is stated that despite the repayment of the amount, the complainant had not returned the cheque in question and had misused the same to file the present complaint.

The learned Judicial Magistrate Ist Class, Jalandhar, in the judgment dated 19.11.2014 after discussing the evidence acquitted the accused.

First of all, the accused in order to prove the defence, has produced on record certified copies of the receipts Ex.D.2 to Ex.D.9 regarding the repayment of said loan, which allegedly have been issued by M/s Singh Finance Corporation in respect of the repayment of loan on behalf of the said finance firm. The complainant has duly admitted the fact of advancing of that loan to Reena daughter of the accused by the firm M/s Singh Finance Corporation for the purchase of Refrigerator. The issuance of the receipts and the fact that said Reena had duly repaid that loan to M/s Singh Finance Corporation, is admitted. The complainant denied the fact that the blank signed cheque was taken as guarantee from the accused against advance of loan amount which was presented in the year 2006. The complainant has also stated in his statement that the accused had earlier taken one loan from the complainant which he still has to repay. When in cross-examination the complainant was asked to produce the record, he refused to produce the same and has stated that he cannot produce the said record regarding the alleged earlier loan taken by the accused. The complainant also has not produced on record any document relating to the loan raised on behalf of said Reena to prove the fact that the cheque in question had not been taken as guarantee in that loan transaction in the year 2004. The accused has also examined DW-1 P.K. Mehta, Special Assistant, UCO Bank, Model House, Jalandhar to prove the fact that the cheque in question pertains to the year 2004 and the complainant had forged the same and presented it in the year 2006. DW-1 has also stated the fact that the cheque in question is a loose cheque, which was issued to the accused on 17.7.2004 and the entry regarding the issuance of cheque to the accused on that date is duly reflected in the cheque returning register, the certified copy of which is Ex.D.1. Ex.D.1 also shows that this loose cheque bearing No.101366 was issued in the name of Rakesh Kumar on 17.7.2004 and also bears the signatures of the accused at point-A. The trial Court after perusing the cheque also came to the conclusion that digit `4' has been changed to digit '6' to make it 2006 from 2004.

CW-1 complainant in his cross-examination has specifically stated that the accused has signed the cheque in question in his presence as well as the alteration in the date column, but the said signatures at the place of alteration has not been admitted by the accused. Further, I find that as per the case of the complainant that loan of ₹15,000/- was taken by the accused, the complainant has only produced on record attested copy of loan ledger Ex.C.6 and during cross-examination also the entire loan ledger along with its original record was called from the custody of the complainant and the same is marked as Ex.D.1. Ex.D.1 makes it clear that no entry regarding the cheque in question has been made in the said account statement/loan ledger. The trial Court also reached to the conclusion that this ledger was from 4.4.2005 to 22.3.2006 containing 13 pages and it has been prepared with one pen only. It is admitted that it has not been mentioned in the ledger to which year it relates and even no person had signed against the entries being made in the said Ex.D.1. The said document has been prepared by the complainant himself without following any norms to maintain the statement of accounts or loan ledger in the usual course of business. Further I find that the case of the complainant that loan of ₹15,000/- had been advanced, but this cheque is only for ₹10,700/- and it is not mentioned whether the other amount had been paid by the accused or not and if paid then when it was paid. All this evidence which has been discussed by the learned Judicial Magistrate Ist Class shows that the presumption under Section 139 NI Act has been duly rebutted by the accused/respondent.

The findings recorded by the learned Judicial Magistrate Ist Class are as per evidence and law. In no way, it can be held that the evidence has been misread and material evidence has not been considered or the findings are perverse etc.

Therefore, from the above, I do not find any ground to grant leave to file appeal. Consequently, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

August 28, 2015. **(Inderjit Singh)**
Judge

hsp