

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1031-MA of 2015

.....

Date of decision:10.12.2015

Naresh Kumar

...Applicant

v.

Naresh Kumar (Kaka)

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. D.K. Bhatti, Advocate for the applicant.

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Inderjit Singh, J.

The applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Naresh Kumar (Kaka)-respondent with the prayer for grant of leave to file appeal against the impugned judgment of acquittal dated 7.5.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment of acquittal dated 7.5.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, which is likely to succeed on the grounds mentioned therein. The learned trial Court has not considered vital evidence available on record and passed the judgment of acquittal on the basis of false, frivolous pleas which were not proved on

record, besides, the plea set up by the defence is not part of their statement under Section 313 Cr.P.C. However, the trial Court unduly gave weightage to the highly improbable and irrelevant documents produced by the accused and totally overlooked the evidence/documents produced by the complainant.

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

From the record, I find that complainant-Naresh Kumar son of Mohinder Pal filed the complaint against Naresh Kumar (Kaka) son of Charan Dass under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). It is stated in the complaint that accused had taken a friendly loan of ₹6.50 Lacs from him on different dates since October 2010 and in order to discharge part of this above liability, the accused had issued cheque bearing No.210149 dated 25.3.2012 for ₹2 Lacs in favour of the complainant. On presentation of the cheque it was dishonoured with the remarks "funds not sufficient". Legal notice was given but when the accused had not made the payment, the complaint was filed. After appreciating the evidence, the learned Judicial Magistrate Ist Class acquitted the accused of the charge framed against him vide judgment dated 7.5.2015. Aggrieved from this judgment, the present application for grant of leave to file appeal has been filed.

A perusal of the judgment passed by the learned Judicial Magistrate Ist Class shows that the accused in the statement recorded under Section 313 Cr.P.C. pleaded that he had not taken any amount of loan from

the complainant. The complainant is doing the business of travel agency and he had allured him that he would settle him in Dubai, as he is having link with the companies at Dubai, where he is residing. He has further pleaded that the cheque in question along with two other cheques of ₹2 Lac and ₹1 Lacs were given to the complainant as full and final settlement for his settlement in Dubai. No such cheque was ever issued to discharge any legal enforceable debt or liability, but the cheque in question has been misused by the complainant. The accused also got examined DW-1 Rajesh Dupar, who deposed regarding the fact that the deal was settled between the complainant and the accused for ₹5 Lacs. The complainant demanded the cheques from the accused for ₹5 Lacs as security and full and final settlement amount for settling in Dubai and the accused issued three cheques, out of which two of ₹2 Lacs each and one for ₹1 Lac to the complainant in his presence. DW-2 Raju Balgotra, also deposed on the similar lines. DW-3 Madhu wife of the accused also deposed the same facts. DW-4 HC Bachittar Singh brought dasti application register of concerned Police Station, but in the said register no entry of alleged application moved by the accused was made.

From the record, I find that first of all no particulars regarding the loan have been given i.e. when it was given and of which amount. A general averment was made that loan of ₹6,50,000/- was borrowed by the accused on different dates since October 2010, but no particulars have been mentioned on which date how much amount was given. No document of any type has been produced on the record to show lending of amount to the

accused by the complainant. No security document has been got executed by the complainant at the time of granting loan. The complainant admitted that two other cheques were also given to him by the accused i.e. cheque of ₹2 Lacs and for ₹1 Lac, but this fact has not been mentioned in the complaint. Both the cheques are of 11.5.2013 and 17.5.2013 i.e. after the filing of this complaint, but the complainant admitted that all these three cheques were given by the accused at once duly filled and post-dated one, but there is no such mention in the complaint. This fact supports the version of the accused and makes the version of the accused more probable. Similarly, such a huge amount has been lent to the accused by the complainant, but nothing has been shown from where this amount was withdrawn and given to the accused. Neither any income-tax return nor any bank account has been produced to corroborate the version of the complainant and this is more necessary when no particulars have been given in the complaint regarding lending the amount to the accused on which date and upto which amount. The findings given by the learned Judicial Magistrate Ist Class, Jalandhar, are correct as per law and evidence. In no way, it can be held that the findings given by the Court below are perverse or some material evidence has been misread by the Court. Nothing has been pointed out at the time of arguments which material evidence has not been considered by the Court and as to how the findings given by the Court below are perverse. A perusal of the judgment passed by the learned Judicial Magistrate Ist Class shows that the reasoning are given by appreciating the evidence in right perspective as per the evidence and law.

Therefore, 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 10, 2015.

(Inderjit Singh)
Judge

hsp