

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1101-MA of 2015

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Date of decision:22.9.2015

Ajay Batra

...Applicant

v.

Ritu Bala

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ramandeep Singh, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ritu Bala-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 23.4.2015 passed by learned Judicial Magistrate Ist Class, Faridabad.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 23.4.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, which is likely to succeed on the grounds mentioned therein. It is further stated that there is sufficient evidence on record against the respondent which has not been taken into consideration by the learned trial Court. It is stated that the respondent has been wrongly and illegally acquitted by the learned trial Court. 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.

From the record, I find that Ajay Batra-complainant filed the complaint against Ritu Bala for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). It is stated in the complaint that the accused is the wife of brother of the complainant's mother and there were family relations between the complainant and the accused. It is alleged that the accused had been borrowing various amounts from the complainant from time to time for her urgent needs for her business of "Private Chit Fund Committees". In this way, an amount of Rs.8 Lacs was advanced by the complainant to the accused. Rs.7 Lacs were advanced in the month of December 2011. The complainant had taken the amount from her mother-in-law, who had got the money earlier by selling off her house for Rs.9 Lacs. It is also stated in the complaint that Rs.50,000/- were given to the complainant in the month of January 2011 and another sum of Rs.50,000/- was given to her in the month of March 2011 by arranging the said amount from his own earnings. When the complainant demanded his money back, then the accused issued cheque bearing No.495837 dated 15.2.2013 for Rs.8 Lacs in favour of the complainant. When the cheque was presented in the bank for encashment, it was returned unpaid with the remarks "funds insufficient". Thereafter, a legal notice dated 1.4.2013 was sent to the accused. As no payment was made, hence the complaint was filed.

The complainant examined himself as CW-1 and tendered his

duly sworn affidavit as Ex.CW.1/A and tendered into evidence some documents.

The learned Judicial Magistrate Ist Class, Faridabad vide judgment dated 23.4.2015 discussed the entire evidence on record and held that the presumption under Section 139 of the NI Act has been duly rebutted. The Court below held that a huge amount of Rs.8 Lacs was given to the respondent as loan without executing any document. No security document has been got issued at the time of giving loan. The capacity of the complainant to give such a huge amount to the accused is also not proved. No documents have been produced to show the loan transaction between the complainant and the accused. It is also the findings of the learned Judicial Magistrate Ist Class that neither sale deed nor any document has been produced to show that some property has been sold by mother-in-law of the complainant nor there is any document to show that this amount has been withdrawn from any bank etc. Otherwise also, the amount of more than Rs.20,000/- cannot be given in cash as per the Income-Tax Act. No account has been maintained by the complainant regarding lending of this huge amount. No Income-Tax record is there. Further more, no date has been mentioned when the loan was given. The earlier transactions which are stated to be between the complainant and the accused are also not pleaded. The Court below held that the defence version regarding misusing the cheque is also probable. The signatures on the cheque is of another hand and the remaining cheque was filled in separate ink. The findings given by the learned Judicial Magistrate Ist Class,

Faridabad, in no way, can be held as perverse or against the evidence. Nothing has been pointed out as to which evidence has been misread by the Court below. Nothing has been pointed out at the time of arguments as to which material evidence has not been discussed by the learned Judicial Magistrate Ist Class.

Therefore, from the above, I find that the findings given by the Court below are correct, as per evidence and law which do not require any interference from this Court.

Therefore, in view of 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.

September 22, 2015.

(Inderjit Singh)
Judge

hsp