

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.24309 of 2015
and
Criminal Misc. No.A-1276-MA of 2015

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Date of decision:30.9.2015

Chander Shekhar

...Applicant

v.

Pirithi Ram

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shubham Kaushik, Advocate for Mr. Vinod S. Bhardwaj,
Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.24309 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 14 days in the filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1276-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Pirithi Ram-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 14.5.2015 passed by learned Judicial Magistrate

Ist Class, Bathinda.

It is mainly stated in the application that the accompanying appeal is being filed against the impugned judgment of acquittal dated 14.5.2015 passed by learned Judicial Magistrate Ist Class, Bathinda, which is likely to succeed on the grounds mentioned therein. It is also stated that the criminal appeal is being filed against the impugned judgment, vide which the trial Court has failed to appreciate the evidence brought on record and thus, has erroneously acquitted the accused which has caused grave prejudice to the applicant. Therefore, it is prayed that the leave to file appeal may be granted.

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

From the record, I find that Chander Shekhar-complainant filed the complaint against Pirthi Ram-respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). In order to discharge his legal liability to repay the loan amount, the accused issued cheque No.079001 dated 12.11.2011 for ₹7 Lacs from his account maintained with the Oriental Bank of Commerce, Zila Parishad, Bathinda as part payment in favour of the complainant. When the cheque was presented, it was dishonoured and the same was returned with the remarks "funds insufficient". Legal notice was issued to the accused and when the loan amount was not returned, the complaint was filed.

Learned Judicial Magistrate Ist Class, Bathinda, after discussing the evidence produced on the record acquitted the accused vide

judgment dated 14.5.2015.

At the time of arguments, nothing has been pointed out as to how the findings given by the learned Judicial Magistrate Ist Class are perverse or which material evidence has not been considered or which material evidence has been misread by the Court below.

From the perusal of the record, especially, the judgment, I find that first of all the accused has nowhere stated in the complaint when the amount of ₹7 Lacs was given to the accused. No date, month or year has been mentioned. Nothing is there in whose presence this amount was given. Nothing has been mentioned as to how the accused is to pay. What was the legal liability for which the cheque was issued?

The Court has discussed the reply of the accused to the legal notice in para 7 of the complaint, which reads as under:-

“Accused has mentioned in his reply to notice that he is entitled to recover Rs.17 Lac from the complainant on the basis of without any cogent evidence rather the complainant has paid the whole amount to the accused against work done by the accused on the cash basis.”

The Court held that when the complainant was examined on oath, he tendered his affidavit that the accused took loan from him. No where in the complaint, he has mentioned about the loan. Simply, mentioning to discharge of legal liability does not serve the purpose. Learned Judicial Magistrate Ist Class has further held that he has mentioned that he has paid the amount to the accused which implies that he has admitted transaction

between him and the accused. When he was confronted with Ex.D.4 in his cross-examination, he replied that he has seen it and it was issued by him to the accused, but has not been encashed, which creates doubt in the complainant's version because he himself admitted in the cross-examination that he has not made it clear as to what work was done for him by the accused. The Court held that by not making his stand clear and not explaining the nature of transaction by the complainant creates doubt about its legal enforceability. Further in cross-examination, the complainant states that he cannot tell as to when he gave amount to the accused. He also stated that he did not remember that the accused gave reply to his legal notice and his counsel must be knowing. The Court in the facts and circumstances and in view of the evidence produced on record held that the presumption under Section 139 of the NI Act has been rebutted. The judgment passed by the Court below is correct, as per evidence and law. The findings given by the learned Judicial Magistrate Ist Class cannot be held as perverse or against the evidence.

Therefore, from the above discussion, I do not find any merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal and the same is dismissed.

September 30, 2015.

(Inderjit Singh)
Judge

hsp