

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1419-MA of 2014

.....

Date of decision:17.9.2015

Gora Ram alias Gora Singh

...Applicant

v.

Ishwar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen Dahiya, 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 Ishwar-respondent seeking grant of leave to file appeal against the judgment of acquittal dated 22.8.2014 passed by learned Judicial Magistrate Ist Class, Hisar.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 22.8.2014 passed by learned Judicial Magistrate Ist Class, Hisar, which is likely to succeed on the grounds mentioned therein. It is also stated that the judgment passed by the trial Court is unsustainable as it was passed without

applying its judicial mind and has erred in law. Therefore, it is prayed that the leave to file appeal may kindly be granted.

The brief facts of the case are that Gora Ram alias Gora Singh-complainant filed complaint against Ishwar-accused that the accused had borrowed a sum of ₹8.5 Lacs from the complainant. In order to discharge the said existing, outstanding, legal and enforceable liability, the accused had issued a cheque bearing No.126374 dated 7.6.2012 for an amount of ₹8.5 Lacs drawn on Bank of India, Hisar, which was presented to the bank for encashment, but cheque was dishonoured with the remarks “insufficient funds”. Then legal notice was given to the accused. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate 1st Class Hisar, after discussing the evidence acquitted the accused.

From the impugned judgment passed by the learned Judicial Magistrate 1st Class, Hisar, I find that first of all no particulars have been given in the complaint, when the loan was given to the accused. Secondly, no source of such a huge amount of ₹8.5 Lacs has been proved by the complainant. The complainant has stated that he had taken this money from his father, who had sold the land. No security documents had been taken from the accused. The accused is neither a close relative nor a business partner nor a close friend. Therefore, the version of the complainant cannot be believed that he will lend such a huge amount of ₹8.5 Lacs to the accused without taking any security document. In the complaint, it is written that ₹8.5 Lacs had been given by withdrawing the same from his

account in the Punjab National Bank and account number has been mentioned, but no evidence has been produced to show that this amount has been withdrawn from this account. Neither statement of account has been produced nor any bank official has been summoned. Further more, there is no document on record that this amount has been paid subject to interest. The complainant is stated to be a property dealer, but no account books have been produced to corroborate his version that this amount has been given to the accused. No income tax return has been placed on the record. The complainant also stated that he used to give advance loan to others also in the village in the sum of ₹10,000/-, ₹20,000/- or ₹30,000/- etc., but he has no money lending license. Otherwise also, even if this statement is taken as correct that he was lending the money, it was only to the extent of ₹10,000/-, ₹20,000/- or ₹30,000/-, but not such a huge amount of ₹8.5 Lacs and that also without obtaining any security documents.

The learned Judicial Magistrate Ist Class by discussing all these facts regarding financial capacity and giving amount of ₹8.5 Lacs without any negotiable instruments etc. held that the presumption under Section 139 of the Negotiable Instruments Act, 1881, has been rebutted and the complainant has failed to prove his case by leading cogent evidence.

The findings given by the learned Judicial Magistrate Ist Class, Hisar, are correct, as per evidence and law and do not require any interference from this Court.

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.

September 17, 2015.

(Inderjit Singh)
Judge

hsp