In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1824-MA of 2015

.....

Date of decision:14.12.2015

Ashok Kumar

...Applicant

v.

M/s C.B.M. Engineering Works

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.C. Shahpuri, 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. with the prayer for grant of leave to file appeal against the impugned judgment of acquittal dated 28.8.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri.

It is mainly stated in the application that the accompanying appeal has been filed against the judgment of acquittal dated 28.8.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, which is likely to succeed on the grounds mentioned therein. It is stated that the learned trial Court has committed a grave error of law while acquitting the respondent-accused, holding that the complainant has failed to prove the case beyond the shadow of reasonable doubt. It has been prayed that leave to file appeal be granted against the impugned judgment dated 28.8.2015.

Ashok Kumar-complainant filed the complaint against M/s C.B.M. Engineering Works under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') on the allegations that accused was having business dealing with the complainant and the accused owed a sum of ₹1,70,580/- to the complainant and in discharge of existing part liability towards the complainant, the accused had issued a cheque bearing No.010132 dated 5.6.2013 in the sum of ₹85,920/- drawn on ICICI Bank, Branch Yamuna Nagar. The cheque was presented for encashment, which was returned with the remarks "funds insufficient". Legal notice was given to the accused and when he did not make the payment, the complaint was filed.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri after appreciating the evidence acquitted the accused.

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

From the record, I find that the defence of the accused is that the complainant was a commission agent working for the accused company and used to purchase material for the company from various stores. He further stated that the accused issued post-dated cheques for purchasing the material to the complainant and the cheque in question was one of them but the complainant instead of purchasing the material misused the cheque in question after leaving the job of the complainant without having purchased any material. It is also stated that the accused had never issued the cheque in question in favour of the complainant in discharge of any existing legal liability.

At the time of statement, the complainant stated that he is partners of M/s Singhal Brick Company. He also stated that in the first week of February 2013 the accused had requested for a financial assistance from the complainant for a sum of ₹2 Lacs and he had withdrawn ₹2 Lacs from the Bank account on 7.2.2013 out of which he gave a friendly loan of ₹1,70,580/- to the accused. He further stated that it was in discharge of this liability that the accused had issued a cheque. He also stated in cross-examination that his firm maintains complete accounts of its business and has also been filing its income-tax returns. He further stated that he has never supplied any bricks to the accused firm, but he got the machines of his brick kiln repaired from the accused firm and except the machine repairing, there were no business dealings of any kind with the accused. The complainant has not shown entry of repair in any account books. Reply to the legal notice was sent by the accused. The complainant has further stated he had given ₹2 Lacs to the accused in cash and he had not shown the same in his account books. This version given by the complainant is totally contradictory with the version taken in the complaint. In the complaint, it has been stated that the accused owed a sum of ₹1,70,580/- to the complainant due to the business dealings whereas while appearing as a witness he has stated that he had lent loan to the accused for a sum of ₹1,70,580/-. Later on, he stated that he gave ₹2 Lacs to the accused in cash. So, the complainant has made material improvements regarding his version which creates doubt in the version of the complainant and further rebuts the presumption under Section 139 of NI Act.

Next, I find that no document was got executed at the time of giving of the loan. Neither this amount has been shown in the account books of the complainant nor this amount has been shown in the income-tax return. Rather, as per the complainant, the complainant got repaired the machines from the accused and that was the only dealing with the accused. The version that a friendly loan was given for a sum of ₹1,70,580/- also looks not natural. The findings given by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri in the judgment dated 28.8.2015, are correct as per law and evidence. In no way, it can be held that the reasoning 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 14, 2015. **(Inderjit Singh)**
Judge

hsp