

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.37885 of 2014
and
Criminal Misc. No.A-1882-MA of 2014 (O&M)

.....

Date of decision:4.12.2015

M/s Oais Auto Financial Services Ltd.

...Applicant

v.

Rajender Kumar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Bhanu Pratap Singh, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.37885 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 109 days in filing the application/appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1882-M A of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rajender Kumar and State of Haryana-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 14.5.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed by the

complainant has been dismissed.

It is submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed. There are sufficient grounds to challenge the judgment dated 14.5.2014 passed by the learned Judicial Magistrate Ist Class, vide which the accused has been acquitted.

From the record, I find that M/s Oais Auto Financial Services Ltd. filed complaint against Rajender Kumar for the offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). As per the complainant's case, the complainant-Company is providing finance for purchasing vehicles to its valuable customers according to their desire and requirement. It is stated that the loan was sanctioned to the accused which was repayable with interest vide agreement. The accused in order to discharge of his above referred debt and liability towards the complainant company, issued cheque No.907379 dated 19.2.2013 amounting to ₹7,30,586/- in favour of the complainant. When the cheque was presented for encashment, it was returned back with the remarks "insufficient funds". Legal notice was issued and when the amount was not paid the complaint was filed.

After appreciating the evidence, learned Judicial Magistrate Ist Class, Gurgaon vide impugned judgment dated 14.5.2014 acquitted the accused.

After hearing the learned counsel for the applicant and after going through the record specially the judgment passed by the

learned Judicial Magistrate Ist Class, I find that the case of the accused is that he had given the cheque at the time of obtaining the loan to the complainant. That cheque had been misused by the complainant. The cheque in question did not bear the hand-writing of the accused. The loan was dated 28.3.2012 repayable in 34 EMIs. Accused had paid EMIs upto October 2012. The said accused could not repay the said EMIs thereafter and finally in May 2013 the company repossessed the vehicle, which was sold by them in December 2013. When the accused could not pay the EMIs, there was no occasion for the accused to issue cheque amounting to ₹7,30,586/-. This amount had been arbitrarily filled in by the complainant. Even the rubber stamp used in the name of the payee of the company on the cheque which shows that the cheque was lying with the complainant before hand and has been misused by filling its contents. The learned trial Court after taking notice of the fact that the cheque was not filled by the complainant and the rubber stamp of the company has been used in the name of payee on the cheque, held that the cheque had been misused and filled by the complainant. The learned Judicial Magistrate also reached to the conclusion that no document has been placed on the record to prove the liability of the accused to the extent of ₹7,30,586/-.

Otherwise also, the version of the accused is probable that when he could not pay even the instalments, then why he will give the cheque of ₹7,30,586/-. The cheque had been filled by the complainant and was taken as security at the time of granting the loan which has been misused later on. Further more, there is nothing on the record when the

vehicle was re-possessioned and sold by the complainant, and as to how the amount remains to be paid by the accused. The trial Court after discussing the law as well as evidence reached to the correct conclusion. The learned Judicial Magistrate has appreciated the evidence in right perspective. The reasoning given by the Court below cannot be held as perverse or against the law. Nothing has been pointed out as to which material evidence has not been appreciated in right perspective or which material evidence has not been considered by the Court below. There is nothing on the record as to which finding is perverse or against the 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 4, 2015.

(Inderjit Singh)
Judge

hsp