

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-320-MA of 2015

.....

Date of decision:19.11.2015

Ashok Kumar Bhatia

...Applicant

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Balkar 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 State of Haryana and Rakesh Kumar Bhatia-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 10.12.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri.

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 as per grounds mentioned therein. The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri has failed to appreciate the evidence in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). It is stated that the judgment of acquittal is based on conjectures and surmises. It has

been 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 Ashok Kumar Bhatia filed complaint against Rakesh Kumar Bhatia under Section 138 of the NI Act. It is stated in the complaint that in discharge of his existing part liability towards the complainant, the accused had issued four cheques bearing Nos.579816, 579817, 579818 and 579819 dated 5.6.2013, 10.6.2013, 20.6.2013 and 30.6.2013 respectively in the sum of ₹30,000/- each drawn on Allahabad Bank, Branch Yamuna Nagar. The said cheques were presented by him to his banker Union Bank of India, Branch Jagadhri, but the same were dishonoured by the Bank with remarks “funds insufficient”. Legal notice dated 12.7.2013 was issued. As the payment was not made, the complaint was filed.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri after appreciating the evidence acquitted the accused. The learned Judicial Magistrate Ist Class has discussed the cross-examination of the complainant where he had stated that he is not a financier, but he has filed cases under Section 138 of the Act against six other persons also. He further stated that money was given by him to the accused in August 2011 and in addition to this he volunteered to state that he had given money to the son of the accused also in the sum of ₹2 Lacs. He further stated that when money was given to the accused, nothing was reduced into writing between the parties and he had not withdrawn the money from the Bank to give the

same to the accused. He further stated that money, which was given by him to the accused, was lying with him at his house since had entered into an agreement to sell of his property. He further stated that when payment was given by him to the accused no one was present as a witness. He also stated that he has not shown this amount in his Income-tax return.

The learned Judicial Magistrate Ist Class also held that the complainant has not stated anything as to what were his friendly relations with the accused and for what purpose the loan was given by him to the accused. The date of demand of loan and the date on which loan was given has also not been mentioned. The Court below relying upon the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028, wherein it has been held that where the complainant alleges that the cheque was issued for repayment of loan and where no document or other material has been brought on record to prove loan transaction and where date of demand of loan and giving of loan is not stated in the complaint, the same is fatal to the case of the complainant and the accused is entitled to acquittal, acquitted the accused.

At the time of arguments, learned counsel for the applicant stated that the accused is brother-in-law of the complainant. He is the cousin of his wife, but no where this fact has been mentioned. No particulars have been mentioned in the complaint as to on which date, at which place and in whose presence the loan was given. There is nothing mentioned as to how much loan was given to the accused and for what purpose. No document was scribed at the time of giving of the loan. No

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record was produced regarding giving the money on loan to the accused. There is nothing on the record nor pleaded in the complaint when the loan was demanded. The above cited law has been correctly relied upon by the learned Judicial Magistrate Ist Class. This loan was also not mentioned in the Income-Tax return. There is no document on record to prove the giving of the loan. Otherwise also, the version of the complainant that he had the money at home as he had entered into an agreement to sell is also not supported and corroborated by any documentary evidence. He had given the loan to so many persons, so he may be maintaining some record, but no such record has been produced. The presumption under Section 139 of the NI Act has been rebutted from the evidence produced by the complainant.

Therefore, from the above, I find that the impugned judgment dated 10.12.2014 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, is correct, as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread and which material evidence has not been considered by the Court in right perspective.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

November 19, 2015.

(Inderjit Singh)
Judge

hsp