

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-385-MA of 2014 (O&M)

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Date of decision:16.1.2015

M/s Markandeshwar Finance Company

...Applicant

v.

Sukhbir

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rishabh Gupta, Advocate for the applicant.

Mr. R.S. Budhwar, Advocate for the respondent.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(4) read with Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the judgment of acquittal dated 24.1.2014 passed by learned Judicial Magistrate Ist Class, Karnal.

It is mainly stated in the application that the case was decided by the learned trial Court on 24.1.2014 on the basis of conjecture and surmises. The learned trial Court further misread and misinterpreted the various judgments. The applicant/appellant has duly proved its case. The applicant/appellant shall suffer an irreparable loss, if leave is not granted.

Notice of motion has been issued in this case.

Mr. R.S. Budhwar, learned Advocate has put in appearance on behalf of the respondent and contested this petition.

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

From the record, I find that the learned Judicial Magistrate Ist Class, Karnal has correctly acquitted the respondent and dismissed the complaint. A perusal of the complaint shows that M/s Markandeshwar Finance Company had alleged that on 8.12.2008, the accused-respondent borrowed a friendly loan of ₹2,50,000/- and executed a pronote and receipt in favour of the complainant firm. The amount was credited to the account of accused-respondent vide cheque No.464531 dated 8.12.2008 drawn at Oriental Bank of Commerce, Karnal. The accused-respondent promised to return the said amount along with interest @1½% per month. The accused in discharge of this part debt/liability, issued cheque No.710859 dated 1.10.2010 for ₹1,47,000/-, which was returned back with the remarks “insufficient funds”. Legal notice was served and the complaint was filed.

The defence of the accused-respondent is that the complainant and his associates were running three finance companies at Karnal under the name and style of M/s Rishi Markandeshwar Finance Company, M/s Markandeshwar Finance Company and M/s Baba Markandeshwar Finance Company. The two finance companies were registered at the address of 25, Buta Singh Market, Karnal and the third company was registered at 221-B Model Town, Karnal. The complainant

falsely deposed before the Court on oath by stating that he did not know about the other finance company M/s Rishi Markandeshwar Finance Company.

The case of the accused-respondent is that he has no dealing with the present complainant-company. He was dealing with M/s Rishi Markandeshwar Finance Company and he availed loan from that finance company. The cheque in question was in possession of the partners of M/s Rishi Markandeshwar Finance Company and the complainant procured the said cheque from that firm and misused the same to file a false complaint against him. It is also case of the accused-respondent that he had already paid the amount to M/s Rishi Markandeshwar Finance Company. The version of the accused-respondent was believed by the Court mainly holding that the complainant is not a reliable witness. The complainant stated that he did not know about the other finance company M/s Rishi Markandeshwar Finance Company, whereas that finance company is also registered on the same address of the complainant company. It is also in the evidence that one of the partners of M/s Rishi Markandeshwar Finance Company was the father of the partner of M/s Markandeshwar Finance Company.

The trial Court held that, in no way, it can be believed that the complainant is not knowing regarding the other finance company, which is registered on the same address. Secondly, there are no particulars regarding the loan amount. No account books have been produced. No income-tax returns have been produced to show the financing of the loan.

Otherwise also, it is the general knowledge that finance company gives the loan after getting executed so many documents and not only on the basis of one pronote and receipt. Therefore, the presumption under Section 139 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been rebutted and from the cross-examination of the witnesses in this case. The accused-respondent gave the reply to legal notice served upon him by the complainant prior to the filing of the present complaint, wherein he had mentioned that he availed loan from M/s Rishi Markandeshwar Finance Company for purchase of vehicle and after the due payment of the entire loan, no dues certificate was issued in his favour. It is also in the reply that at the time of availing loan he was required to sign on blank papers, printed forms and blank signed cheques. To substantiate his version, the accused-respondent examined Sachin, Assistant in RTO Office, Karnal as DW-3 to prove the factum that he got financed a vehicle from M/s Rishi Markandeshwar Finance Company and no objection certificate was issued in his favour after the hypothecation was cleared. The complainant relied upon the statement of account of the accused-respondent in which ₹2,50,000/- are stated to have been entered, but this amount can also be loan from M/s Rishi Markandeshwar Finance Company. No cheque number had been given vide which this amount had been deposited in the statement of account and it cannot be connected with the present complainant. Other documents Exs. PW.3/A, PW.3/B and PW.3/C have been placed on record to support the defence version regarding the purchase of vehicle etc.

Keeping in view the evidence on record and the reasoning given by the learned Judicial Magistrate Ist Class, Karnal, I find that the findings are correct and as per evidence and law.

From the record, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

January 16, 2015.

(Inderjit Singh)
Judge

hsp