

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-45-MA of 2015 (O&M)

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Date of decision:18.8.2015

Jai Karan

...Applicant

v.

Suresh Kumar Sharma

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sagar Aggarwal, 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 Suresh Kumar Sharma for grant of leave to appeal against the judgment dated 21.10.2014 passed by learned Chief Judicial Magistrate, Bhiwani, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

It is mainly stated in the application that the learned Chief Judicial Magistrate, Bhiwani vide judgment dated 21.10.2014 has acquitted the respondent of charge under Section 138 of the Act. The trial Court has misread the evidence produced by the applicant/appellant and also ignored the settled propositions of law. It is prayed that leave to appeal may be granted.

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

From the record, I find that Jai Karan-complainant filed complaint against Suresh Kumar Sharma under Section 138 of the Act. It is stated that the complainant advanced a sum of ₹4 Lacs as debt to the accused on 21.12.2005 in cash and in token of receiving of the said amount, the accused executed a pronote of ₹4 Lacs in his favour. According to the complainant, in order to discharge the liability, the accused issued cheque No.0696557 dated 30.7.2007 drawn on State Bank of Patiala, Vikas Nagar, Bhiwani for a sum of ₹5,54,000/-, which was dishonoured on its presentation with the remarks that the account was closed. Thereafter, the complainant served legal notice upon the accused. Despite receiving legal notice, the payment was not made, hence the complaint was filed.

A perusal of the record as well as the judgment passed by the learned Chief Judicial Magistrate, Bhiwani, it shows that the complainant examined PW-1 Parmod Kumar Jain, official of State Bank of Patiala, Vikas Nagar Branch, Bhiwani to prove the documents Ex.PW.1/A to Ex.PW.1/G, which is the record of the account of the accused. Thereafter, the complainant examined himself as PW-2 and deposed as per his case. He placed on record pronote as Mark-A, cheque in question as Ex.P.1, cheque dishonour memo as Ex.P.2, legal notice as Ex.P.3, registered envelope as Ex.P.4, Postal receipt as Ex.P.5 and acknowledgment card as Ex.P.6. During the cross-examination, the defence counsel put the

suggestion that actually no transaction took place in between complainant Jai Karan and accused Suresh Kumar, rather there was loan transaction in between Narender Prabhakar and the accused and that matter was settled between them. The complainant is henchman of Narender Prabhakar and he has misused the blank signed pronote and cheque after taking the same from Narender Prabhakar only to harass the accused. The financial capacity of the complainant Jai Karan was also raised.

The accused also examined V.B. Kashyap, Hand-writing and Finger Print Expert as DW-1, who proved his report. He compared the disputed writing on the application for exemption of the complainant from attendance dated 16.5.2008 with disputed writing and compared the same with the admitted body writing of Narender Prabhakar as available on the summoned case file titled as “Narender Prabhakar Versus Dharampal” and the Expert proved that this exemption application given by the complainant was scribed by Narender Prabhakar. The Handwriting and Finger-print Expert also compared the signatures on the acknowledgment card which was also found not of the accused.

In defence, DW-2 got produced the record of civil case. Parveen Kumar, Ahlmad attached to the Court of learned ACJM, Bhiwani produced the record. Some documents were also placed on the record in the defence. The documents are produced to show that the legal notice was not issued to him at his address.

After appreciating the evidence on record, the accused was acquitted as the complainant failed to prove the case beyond reasonable

doubt. The learned Chief Judicial Magistrate discussed the evidence and held that firstly pronote has not been proved and it is only Mark-A. Secondly, the complainant as per the cross-examination does not know about the whereabouts of the accused and he failed to tell other particulars of the accused. He time and again named one Raj Kumar common friend between him and the accused. It creates reasonable doubt that a person will lend huge amount of ₹4 Lacs as loan without knowing the borrower. Again the complainant denied that he has any relation with Narender Prabhakar, but the defence has proved that the complainant was knowing him well as the exemption application of the complainant was scribed by Narender Prabhakar.

At the time of arguments, learned counsel for the applicant argued that Narender Prabhakar was the brother of the Advocate, who was pursuing the complaint case on behalf of the complainant, but there is no such plea or evidence on record. Otherwise also, Narender Prabhakar is not a scribe nor doing anything in Court complex nor helping the Advocate in his work, why he will scribe the application of exemption of the complainant if he does not know the complainant. Further, I find that the Chief Judicial Magistrate has discussed one Panchayati compromise also, which was arrived at between Narender Prabhakar and accused Suresh Kumar Sharma upon which Raj Kumar has signed as a witness. Raj Kumar has been actively participating in this case as shown by Ex.DW.3/A, which are the summons of criminal revision arising out of the present case. Report on the summons shows that Raj Kumar got served

the dasti summons upon accused Suresh Kumar on behalf of the complainant. As already discussed, the pronote, which is only Mark-A, was not proved. Further, both the pronote and cheque were scribed by Rajdeep and he was not examined.

From the perusal of the evidence on record, I find that the learned Chief Judicial Magistrate, Bhiwani has correctly appreciated the evidence on record. A reasonable doubt exists in the prosecution version. The presumption under Section 139 of the NI Act has been duly rebutted. The judgment passed by the learned Chief Judicial Magistrate is as per evidence and law.

In view of the above discussion, 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.

August 18, 2015.

(Inderjit Singh)
Judge

hsp