

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.11267 of 2015
and
Criminal Misc. No.A-603-MA of 2015 (O&M)

.....

Date of decision:25.8.2015

Kochhar Sung up Acrylic Ltd.

...Applicant/Complainant

v.

Deepak Kapoor

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

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Inderjit Singh, J.

Cr. Misc. No.11267 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 177 days in filing the criminal miscellaneous application for grant of leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-603-MA of 2015 (O&M):

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Deepak Kapoor praying for the grant of leave to appeal against the judgment dated 25.7.2014 passed by learned Judicial Magistrate Ist Class, Amritsar, vide which the accused/respondent has been acquitted from the charges of offence under Section

138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 25.7.2014 passed by learned Judicial Magistrate Ist Class, Amritsar, vide which the accused-respondent has been acquitted of the charge for the offence under Section 138 of the NI Act in the complaint filed by the applicant. It is stated in the application that there is sufficient evidence on record to prove the guilt against the respondent-accused, which has not been taken into consideration by the learned trial Court while passing the impugned judgment and thereby a great prejudice has been done to the applicant.

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

A perusal of the record shows that Kochhar Sung up Acrylic Ltd.-complainant filed a complaint against Deepak Kapoor, proprietor of Disha Trading Company under Section 138 of the NI Act on the ground that cheque issued by the accused has been dishonoured. From the perusal of the impugned judgment dated 25.7.2014, I find that in this case not even a single witness has been examined by the complainant. As per the impugned judgment the previous costs was not paid. No CW had been produced by counsel for the complainant. The notice of accusation was served upon the accused on 8.12.2012 and since then the complainant had availed nine opportunities to lead its evidence, but failed to conclude the same.

Keeping in view the fact that no evidence has been produced by

the complainant, therefore, in the absence of any evidence, the accused has been rightly acquitted it being a case of no evidence. The averment in the application filed under Section 378(4) Cr.P.C. that there is sufficient evidence on record to prove the guilt against the accused is totally contradictory to the record.

Therefore, from the above as it is a case of no evidence and the accused has been rightly acquitted, I find no 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 25, 2015.

(Inderjit Singh)
Judge

hsp