In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-748-MA of 2015

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Date of decision:17.12.2015

Baldev Singh

...Applicant

v.

Daljit Singh alias Baggu

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gulzar Mohd., 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 Daljit Singh alias Baggu-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 27.1.2015 passed by learned Judicial Magistrate Ist Class, Khanna, vide which the complaint filed under Section 138 of the Negotiable Instruments Act,1881 (hereinafter referred to as `the NI Act') by the complainant has been dismissed.

It is mainly stated in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed on the grounds taken therein. It has been stated that a strong *prima facie* case is made out for grant of leave to appeal against the order of acquittal. It is also stated that the application be allowed and the leave to file appeal be granted against the judgment of acquittal.

I have heard learned counsel for the applicant and have gone through the record specially the judgment dated 27.1.2015 passed by the learned Judicial Magistrate Ist Class, Khanna.

As per the complainant's version accused-Daljit Singh alias Baggu borrowed a sum of ₹5 Lacs as loan from the complainant with the promise to return the same within fifteen days. When the amount was not paid back after the passing of two weeks, the accused was contacted and he issued cheque No.402442 dated 10.6.2008 of Oriental Bank of Commerce, Branch Doraha to the complainant out of his account No.6924. When the cheque was presented for encashment, it was returned back with the remarks "payment stopped by the drawer". Legal notice was issued. When the payment was not made, the complaint was filed.

After completion of the evidence of the complainant, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant. The accused denied the correctness of the evidence and further stated that Baldev Singh-complainant is running commission agent shop in the name of M/s Gurdeep Singh, Ramandeep Singh at Khanna and the accused was his customer and used to sell his crop and have obtained ₹1,50,000/- as advance from the said firm on 29.11.2005. Baldev Singh obtained blank cheque No.402442 from him as security of above amount in 2005. Baldev Singh has no capacity to pay huge amount of ₹5 Lacs. It is also stated that the accused has never borrowed ₹5 Lacs from Baldev Singh. The complainant had used the said blank cheque, which was given as security of the amount of ₹1,50,000/- as he had stopped selling his crop at the shop of complainant's firm.

The learned Judicial Magistrate Ist Class, Khanna, after appreciating the evidence on record found that during the cross-examination of the complainant this fact has been admitted by him that the accused had stopped selling agricultural produce at the shop of his firm after 2005-06 and after this period the accused never came to their shop for selling his agricultural crop. He further stated that his two firms have no concern and there was nothing due against Daljit Singh accused after 2006. The trial Court held that it is clear from the admission of the complainant that after 2006, the accused stopped selling the crop to him and the Court further held that it is highly improbable that a person who stopped selling his crop to the commission agent and the same commission agent would give a loan of ₹5 Lacs to that person in personal capacity. The Court below also held that when the earlier loan of ₹1,50,000/- given by the firm of the complainant to the accused by way of cheque then it is not possible that an amount of ₹5 Lacs would be given by the complainant to the accused without execution of written document. During the cross-examination of the complainant, he admitted this fact that the accused had repaid the amount on 10.2.2008 and the account made nill. Further, the complainant during his cross-examination admitted that he cannot tell the exact date of advancement of loan of ₹5 Lacs to Daljit Singh. The complainant did not mention in the complaint that at what rate of interest he gave the loan to the accused. No document was reduced into writing at the time of advancement of the loan. The defence of the complainant is blank cheque in question which was taken as security in the year 2005 while granting loan of ₹1,50,000/-. There is no document produced on record to prove the lending of ₹5 Lacs to the accused. No entry was made in any books of account. Neither any income-tax return has been produced nor this amount has been shown in the income-tax return. As already discussed, when the accused had stopped selling his crop on the shop of the complainant in the year 2006, it is not believable that he will give ₹5 Lacs to the accused without getting executed any document. Therefore, the presumption under Section 139 of the NI Act has been duly rebutted by the accused.

The accused has been rightly acquitted by the Court below while appreciating the evidence in right perspective. There is nothing on the record to show that any evidence has been misread by the learned Judicial Magistrate Ist Class, Khanna. There is also nothing pointed out which material evidence has not been considered by the Court below. The reasoning given by the Court are correct, as per evidence and law. The findings given by the learned Judicial Magistrate Ist Class, Khanna, in no way, can be held as perverse and do not require any interference from this Court.

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 17, 2015.

(Inderjit Singh)
Judge

hsp