

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.1644 of 2015
and
Criminal Misc. No.A-77-MA of 2015

.....

Date of decision:29.9.2015

Mam Chand

...Applicant

v.

Deepak Sharma

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Namit Khurana, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.1644 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 33 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-77-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Deepak Sharma-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 16.5.2014 passed by learned Judicial Magistrate Ist Class, Bilaspur, District Yamuna Nagar.

It is mainly stated in the application that the accompanying appeal is being filed against the impugned judgment dated 16.5.2014 passed by learned Judicial Magistrate Ist Class, Bilaspur, which is likely to succeed on the grounds mentioned therein. It is also stated that learned Judicial Magistrate Ist Class, Bilaspur, vide judgment dated 16.5.2014 acquitted the accused and has not appreciated the facts on record and evidence adduced by the appellant in a true and correct perspective and passed the impugned judgment on the basis of conjectures, surmises and presumption which is liable to be set aside. Therefore, it is prayed that 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 Mam Chand-complainant filed the complaint against Deepak Sharma under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). As per the complainant's version the accused in discharge of his existing liability towards the complainant had issued cheque bearing No.369659 dated 11.6.2008 for ₹8.50 Lacs drawn on ICICI Bank Limited, Yamuna Nagar in favour of the complainant. When the cheque was presented, it was returned unpaid with the remarks "funds insufficient". Legal notice was issued to the accused. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, after discussing the law and the evidence on record reached to the conclusion that presumption under Section 139 of the NI Act has been duly rebutted. The complainant

Mam Chand stated in cross-examination that he is well acquainted with Deepak Sharma and he gave money to accused for sending his son abroad and that fact he had mentioned in the complaint as well as in affidavit. He was confronted with the affidavit, where it was not so recorded. He further categorically stated in his cross-examination that he had given the money in the year 2007, but he had not stated anything the amount was given on which date, month and year and in whose presence. There is nothing in the complaint as well as in the examination-in-chief. The complainant further stated in the cross-examination that he had given the money in the year 2007, but he could not tell the date as well as the month. He further stated that perhaps the amount was given in the year 2006 or in the year 2007. He stated that the amount was given in the Court complex at Chhachhrauli by the complainant in the presence of Typist Dinesh Sharma as well as one Ram Jattan. No writing was taken. The amount of ₹8.50 Lacs is a huge amount. The complainant has not brought any evidence from where he had withdrawn this amount. He stated that he had sold about 4½ acres of land, but no document has been placed on record to show the sale deed. Further, no income-tax return has been produced on the record and the complainant stated that he is not an income-tax payee. There is no other document of any type to prove as to when the amount was given to the accused. Further more, the accused gave an application to the Police, in which it has stated that only ₹3 Lacs have been paid to the accused.

In view of this cross-examination and the fact that neither the complainant pleaded in the complaint nor stated in the examination-in-chief

that when the amount was given and he failed to prove his capacity to lend such a huge amount without taking any security document and in view of the averments in the application Ex.D.1 given to the Police, which is contradictory, I find that the findings given by the learned Judicial Magistrate Ist Class are correct, as per evidence and law and do not require any interference. In no way, it can be held that these findings are perverse or some material evidence has not been considered or some material evidence has been misread by the Court.

Therefore, from the above, I find no ground to grant leave to file the 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.

September 29, 2015.

(Inderjit Singh)
Judge

hsp