In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-932-MA of 2014

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Date of decision:9.10.2015

Manoj Kumar

...Applicant

v.

Manmohan

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Karambir Singh Kahlon, 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 Manmohan-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 11.4.2014 passed by learned Judicial Magistrate Ist Class, Mukerian.

It is mainly stated in the application that the accompanying appeal is being filed against the impugned judgment dated 11.4.2014 passed by learned Judicial Magistrate Ist Class, Mukerian, which is illegal and arbitrary and the respondent-accused has been acquitted wrongly. Therefore, it is prayed that the 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 Manoj Kumar-complainant filed the complaint against Manmohan, Managing Director, M/s Jammu and Kashmir

Premium Cement Works Private Limited-accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act').

As per the brief facts, the complainant is the partner of Royal Cement Company Sansarpur Terrace, where he runs/deals in the business of cement. The accused also runs/deals in the business of cement at Jammu & Kashmir. Relation between accused and his brother and the complainant was very good being the friend of each other. In the first week of May 2010, the accused along with his brother approached the complainant and requested him to give ₹2 Lacs in cash for their business. The complainant believing the request of the accused and his brother agreed to give ₹2 Lacs to accused and his brother. On 21.5.2010, the accused along with his brother received ₹2 Lacs from the complainant in the presence of witnesses and the brother of accused, namely, Mahesh Chander executed an undertaking on non-judicial paper which was already in his possession regarding the receiving of ₹2 Lacs because the accused and his brother jointly run the business of cement and they are jointly responsible for all the affairs of the Jammu & Kashmir Premium Cement Works Pvt. Ltd. being Director and Managing Director. The accused is the Managing Director of M/s Jammu & Kashmir Premium Cement Works Pvt. Ltd. The accused orally and his brother through the above mentioned writing/ undertaking dated 21.5.2010 agreed to return the above said amount of ₹2 Lacs to the complainant within the period of one year. On 25.2.2011, the accused as Managing Director of M/s Jammu & Kashmir Premium Cement Works Pvt.

Ltd., Jammu issued four cheques bearing Nos.016860 to 016863 amounting to ₹50,000/- each. Out of these four cheques, the accused specifically issued two post-dated cheques No.016861 and 016863 dated 25.3.2011 of Jammu & Kashmir Bank Limited in order to discharge his legal liability to pay the friendly loan amounting to ₹2 Lacs. He issued these cheques in the same transaction in order to discharge his legal liability to repay the loan of ₹2 Lacs. The complainant presented two cheques bearing No.016860 and 016862 dated 25.2.2011 amounting to ₹50,000/- each in his account in P.N.B. Branch Office, Talwara for the collection and the remaining two post-dated cheques bearing No.016861 and 016863 dated 25.3.2011 amounting to ₹50,000/- each were submitted on 28.3.2011 for encashment, but the same were returned unpaid with the remarks "funds insufficient" in respect of cheques No.016860 and 016862 and "payment stopped by drawer" in respect of cheques No.016861 and 016863. The accused have intentionally and wrongly issued the above mentioned four cheques to the complainant when accused have no sufficient amount in his account to clear the cheques. The complainant issued legal notice to the accused as well as to his brother, but the legal notice issued to the accused was returned back with the remarks "refused" and no reply was given by the brother of the accused also. Hence, the complaint was filed.

After the evidence, the learned Judicial Magistrate Ist Class, Mukerian, acquitted the accused and dismissed the complaint. The learned Judicial Magistrate Ist Class held that the Company has not been made a party in the present case which was a necessary party and after discussing the law laid down by the Hon'ble Supreme Court acquitted the accused.

At the time of arguments, learned counsel for the applicant argued that the loan was given to accused Manmohan in his personal capacity and the Company is not a necessary party. He also argued that there is no transaction of the complainant with the Company. So, on that ground also, the Company is not required to be impleaded as a party in the present case. He further argued that the Company is otherwise also not a necessary party. At the time of arguments, learned counsel for the applicant also admitted that the cheques which were drawn by Manmohan have been issued from the account of the Company i.e. M/s Jammu & Kashmir Premium Cement Works Private Limited.

After hearing learned counsel for the applicant and after going through the record, I find that a perusal of the averments made in the complaint shows that the loan was taken for running the business of cement of the accused firm. It is also in the complaint that the accused and his brother both are jointly responsible for all the affairs of M/s Jammu & Kashmir Premium Cement Works Private Limited being Director and Managing Director and accused Manmohan is the Managing Director of M/s Jammu & Kashmir Premium Cement Works Private Limited. A perusal of the record shows that the amount was given to the Company through the accused Managing Director and his brother, who was stated to be a Director. The cheques were also issued from the account of the said Company. If the loans have been given to the Company or it was taken on behalf of the Company, then the Company is a necessary party as held in Aneeta Hada v.

M/s Godfather Travels and Tours Pvt. Ltd., 2012 (2) R.C.R. (Cr.) 854, which is a three Judges Bench judgment of the Hon'ble Supreme Court, in which it is held that where the offence has been committed by the Company and prosecution is of the Director of the Company, but the Company is not arrayed as an accused, the proceedings were quashed.

In view of the law laid down by the Hon'ble Supreme Court in this judgment, the Company is a necessary party. As already discussed at the time of arguments, the learned counsel for the applicant has changed the version and alleged that it was a personal loan of that accused. If it be the situation even then in that case the drawer of the cheques has not issued the cheques from his own account. When he has issued the cheques from the account of the Company, then the ingredient of Section 138 of the NI Act is not fulfilled and in that case again the accused is entitled to acquittal for the offence under Section 138 of the NI Act.

Therefore, from the above, I find that the findings given the Court below are correct, as per evidence on record and do not require any interference from this Court.

Therefore, in view of the above discussion, 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.

October 9, 2015.

(Inderjit Singh)
Judge

hsp