In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-436-MA of 2013

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Date of decision:14.1.2016

Om Parkash

...Applicant

v.

M/s Jai Shanker Trading Company and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.P. Soi, Advocate for the applicant.

Mr. R.K. Bansal, Advocate for respondents No.1 and 2.

None for respondent No.3.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against M/s Jai Shanker Trading Company and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 2.8.2010 passed by learned Sub Divisional Judicial Magistrate, Guhla, whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') has been dismissed. The appeal filed before the learned Additional Sessions Judge, Kaithal, has also been dismissed as not maintainable vide order dated 30.10.2012.

It is submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It is also stated that the respondents are liable to be convicted, but the lower appellate Court has not decided the appeal on merits. It is also prayed that the application may be accepted and the applicant may be granted leave to file appeal against the judgements of acquittal by the Courts below.

I have heard learned counsel for the applicant and have gone through the Lower Courts record as well as the judgment dated 2.8.2010 passed by the learned Sub Divisional Judicial Magistrate, Guhla.

From the record, I find that complainant-Om Parkash filed complaint against M/s Jai Shanker Trading Company, Commission Agents, Shyam Lal and Nizamudin for the offence under Section 138 of the NI Act. As per the facts of the complaint, accused Nos.2 and 3 are partners of accused No.1 and are responsible for the day to day business and activities of accused No.1. They are managing, controlling and running the business of accused No.1. The accused No.1 to 3 had issued cheque bearing No.920104 for ₹6,95,850/- in favour of the complainant on 25.7.2004 duly signed by accused No.2 to discharge accused No.1 firm's existing liability of the amount of said cheque. The complainant presented the said cheque to his banker Oriental Bank of Commerce, Cheeka for encashment on 3.8.2006, which was returned unpaid because of insufficient funds. The cheque was again presented for encashment, but was again returned due to insufficient funds on 7.8.2006. Legal notice was issued. When the amount was not paid, then the complaint was filed.

The learned Sub Divisional Judicial Magistrate, Guhla, after appreciating the evidence acquitted the accused vide judgment dated 2.8.2010. From perusal of the judgment passed by the Court below, in no way, it can be held as perverse or against the evidence. The evidence has been discussed by the Court in right perspective. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material has not been considered by the Court. Nothing has been argued as to how the findings given by the Court below are perverse. It is settled law that there is presumption under Section 139 of the NI Act, but at the same time, it can be rebutted even from the evidence produced by the complainant. In the present case, the accused also examined DW-1 Dilbag Singh, DW-2 Vishvnath, DW-3 Deepak Kumar and DW-4 Sunita in their defence.

From the record, I find that it is an admitted fact that the cheque Ex.C.5 bears the signatures of only accused Shyam Lal. A perusal of cheque Ex.C.5 shows that there is a line with black ink and a Mark i.e. 'X' is existing on the cheque dated 25.7.2006 amounting to ₹6,95,850/-. The complainant while appearing in the witness box as CW-3 during his cross-examination deposed that if the bank made the Mark-'X' on the cheque, the same deems to be cancelled. As per the evidence, the complainant was working as 'Munim' at the firm M/s Puran Chand Chhajju Ram, Cheeka. He is stated to be earning ₹80,000/- to ₹85,000/- per annum as salary. The complainant also stated that he borrowed ₹3 Lakhs from his sister and his sister is a household lady. He also stated that he had also borrowed the amount from other relatives also. There is no document on record to show that any loan was given to the firm. No security document was taken. No particular was given regarding the existing liability. Nothing has been mentioned on which date, month or year, the loan was given. Even it has not been mentioned that the loan had been given to the accused. The capacity of the complainant to advance such a huge loan also creates doubt. No document has been placed on record to show that this amount has been shown in the Income-tax return or in any account nor anything is there that this amount had been withdrawn from the Bank. Otherwise also, it looks unnatural that a person, who himself is earning ₹80,000/- to ₹85,000/- per annum will give such a huge amount to the firm without getting any security document etc. Sister of the complainant has not been examined to show that she had given ₹3 Lakhs to the complainant.

Keeping in view the reasoning given by the learned Sub Divisional Judicial Magistrate, Guhla, in the judgment, I find that presumption under Section 139 of the NI Act has been duly rebutted by the accused. The judgment passed by the Court below is correct as per evidence and law and does not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

January 14, 2016. **(Inderjit Singh)**
Judge

hsp