

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-540-MA of 2013

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Date of decision:6.4.2016

Kalawati

...Applicant

v.

Constable Balwan Singh Makkar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Chand Ram Olla, Advocate for the applicant.

Mr. J.S. Thind, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Constable Balwan Singh Makkar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.12.2011 passed by learned Judicial Magistrate Ist Class, Hisar.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 3.12.2011 passed by learned Judicial Magistrate Ist Class, Hisar, which is likely to succeed on the grounds mentioned therein. Therefore, it has been prayed that the leave to file appeal be granted.

From the record, I find that Kalawati-complainant filed

complaint against Constable Balwan Singh Makkar-respondent under Section 138 of the NI Act. It is mainly stated that the complainant through her husband, duly appointed as Special Power of Attorney, namely, Baldev Singh and accused Balwan Singh had borrowed an amount of ₹2,55,800/- from her on 26.4.2007, for which a cheque bearing No.SKR-455339 dated 26.4.2007 was issued by the accused with the condition that the same be presented in the month of October 2007. The complainant gave the said cheque to her husband-Baldev Singh, who presented the same in his account with Syndicate Bank, Hisar for encashment, which was returned with the remarks “insufficient funds”. Legal notice was issued. When the amount was not paid, then the complaint was filed. The complainant examined herself through Special Power of Attorney as PW-2 and Janak Raj, Clerk from Punjab National Bank as PW-1.

On the other hand, the accused denied all the allegations against him in the complaint and got examined in defence Suresh Kumar as DW-1.

Notice of motion was issued in this case.

Mr. J.S. Thind, learned Advocate has appeared on behalf of the respondent and contested this application. Lower Court record was also summoned.

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

From the record, I find that the learned Judicial Magistrate Ist Class, Hisar, vide impugned judgment dated 3.12.2011 acquitted the

accused and dismissed the complaint. The learned Magistrate after appreciating the evidence in right perspective held that the complainant Smt. Kalawati failed to adduce even an iota of evidence to establish that she had friendly relation or even acquaintance with the accused, due to which huge amount of ₹2,55,800/- was granted to him at the mere asking and that also without executing any pronote or writing in lieu thereof, without even insisting presence of any witness at the time of alleged money transaction. The Court held that the existence of consideration for the cheque remained not proved by the complainant, due to which she was not entitled to the presumption under Section 118(a) of the NI Act.

In order to discharge the burden of proof, the accused examined Shri Suresh DW-1, who submitted that both the parties to the complaint were not known to each other, instead it was he, who shared friendly relations with the complainant and her husband Baldev Singh and was under an obligation to repay the debt/other liability of ₹1,70,000/-. He also claimed to be ready and willing to repay the outstanding amount and pleaded complete innocence of accused Balwan Singh. He further stated that the cheque in question had been issued by the accused with an endorsement- “self, to his nephew, namely, Sh. Rajbir Singh (driver of his jeep) to incur expenses in its repair”, but the said cheque was somehow handed over by Rajbir to him i.e. DW-1, who further delivered the same to the complainant Smt. Kalawati, in discharge of his debt/other liability of loan of ₹1,70,000/- as security.

The findings given by the learned Judicial Magistrate Ist Class,

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Hisar, in no way, can be held as perverse or against the evidence or law. Otherwise also, the case of the complainant is that at the time of giving the loan amount, no other person was present. The complainant herself has not come to the witness box. Her Special Power of Attorney i.e. her husband had appeared as PW-2 in the complaint.

I have perused the statement of PW-2 Baldev Singh. He nowhere stated that the loan was given in his presence by the complainant to the accused. When the accused is denying the loan and there is no document on record to prove the loan transaction and the attorney nowhere says that the loan was given in his presence and further in the circumstances that the cheque is for self and further in view of the statement of DW-1, I find that the probable defence raised by the accused has been supported and corroborated by the evidence on record. Therefore, the presumption under Section 139 of the NI Act has been duly rebutted. Therefore, the findings given by the learned Judicial Magistrate Ist Class, Hisar, is correct as per evidence and law and do not require any interference from this Court.

Therefore, from the above, 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.

April 6, 2016.

(Inderjit Singh)
Judge

hsp