

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-688-MA of 2013

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Date of decision:16.9.2016

Sat Pal Bansal

...Applicant

v.

R.K. Goyal

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. V.B, Aggarwal, Advocate for the applicant.

None for the respondent.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed by the complainant/applicant under Section 378(4) Cr.P.C. against R.K. Goyal, proprietor of Raju Hosiery Agency for grant of leave to appeal against the judgment dated 31.5.2013 (Annexure-P.1) passed by learned Judicial Magistrate Ist Class, Chandigarh, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

It has been mainly stated in the application that the impugned order dated 31.5.2013 passed by the learned Judicial Magistrate Ist Class, Chandigarh, is patent, manifest, illegal and against the facts and law and as such is liable to be set aside. The learned trial Court has not taken into consideration the evidence tendered by the complainant Ex.C.1, therefore,

the finding of the learned JMIC is liable to be quashed. It has been mentioned that the learned trial Court decided the matter in haste and against the basic principles of law because of misreading of law and evidence available on the file. It has been prayed that leave to file appeal may be granted.

From the record, I find that Sat Pal Bansal (Legal Representative) son of Late Shri Chander Bhan Bansal filed complaint under Section 138 of the NI Act against R.K. Goyal, Proprietor, Raju Hosiery Agency. It is mainly the case of the complainant that the complainant had given ₹70,000/- to the accused for personal need. In discharge of this liability, the accused had issued cheque No.159175 dated 8.11.2000 worth ₹70,000/- to the complainant. When the cheque was presented for encashment, it was returned with the remarks “account inoperative”. Legal notice was sent. When the amount was not paid within time, the complaint was filed.

Vide the impugned judgment, the learned Judicial Magistrate Ist Class, Chandigarh, acquitted accused. An appeal was filed before the learned Sessions Judge and the learned Sessions Judge, remanded back the matter.

During the proceedings Chander Bhan Bansal original complainant died and his son Sat Pal Bansal was impleaded. The learned Judicial Magistrate Ist Class, Chandigarh, again vide judgment dated 31.5.2013 dismissed the complaint.

Aggrieved from the judgment, the appeal along with

application under Section 378(4) Cr.P.C. for leave to appeal has been filed.

Notice of motion has been issued in this case.

Earlier Mr. Karan Vir Nanda, Advocate has put in appearance on behalf of the respondent, but today no one is present to argue the case on behalf of the respondent.

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

From the record, I find that firstly as per law no appeal against acquittal in complaint case is maintainable before the Sessions Court. Therefore, the order passed in the appeal by the Sessions Court and consequential order passed by the learned Judicial Magistrate Ist Class, Chandigarh, are not as per law. Therefore, the first order of acquittal passed by the learned Judicial Magistrate Ist Class, Chandigarh, is to be looked into for the purpose of permission to file appeal.

A perusal of the judgment dated 1.9.2008 (Annexure-P9) passed by learned Judicial Magistrate Ist Class, Chandigarh, shows that no particular of the loan amount had been given by the complainant i.e. on which date, month or year the loan was given. Nothing is there in whose presence and at which place and whether in cash or by way of cheque etc. the amount has been given. Nothing has been mentioned regarding the capacity of the complainant nor regarding the source of the amount has been mentioned in the complaint. After the issuance of the legal notice, reply was received by the complainant in which the accused has stated that he had taken only ₹10,000/- and the cheque was given only for ₹10,000/- and the

complainant had filled the cheque and the figure 'one' had been converted to 'seven'. The accused to prove the defence version has examined the Handwriting Expert DW-1 Sumit Kumar Arora, who proved his report Ex.DW.1/A and found that amount of ₹10,000/- had been altered into ₹70,000/- in figures. He also opined that the disputed cheque was fabricated cheque. The learned Judicial Magistrate Ist Class, Chandigarh, has also given the finding that the figure '1' has been converted to '7'.

I have also seen the original cheque on the record of lower Court, from which on the face of it with naked eye it can be inferred that the figure '1' had been changed to '7'. The defence version raised by the accused is probable. He had raised the defence at the very first stage by giving reply to the legal notice and that has been corroborated by the defence version i.e. the statement of the Document Expert. Further more, there is no document on record to prove this loan transaction of ₹70,000/-. No particulars have been mentioned. Balance-sheet has been produced by the complainant, but in cross-examination CW-3 Sat Pal Bansal admitted that on the last page of the balance-sheet where the loan had been shown, it does not bear the signature of his father and the last two pages of the balance-sheet are unsigned and not proved by producing the witnesses from Income-Tax Department. The complainant also relied upon same cheque vide which he claimed to have paid the amount to the accused. First of all, there is no such pleading in the complaint that the payment was made vide this cheque to the accused. Secondly, though the cheque was in the name of R.K. Goyal-accused, but it was a bearer cheque and as per the defence

witness the cheque was got encashed by one Ram Charitar and signatures of Ram Charitar are on the backside of that cheque which also shows that cheque had not been got encashed by accused R.K. Goyal. Further more, there is no documentary evidence on record to connect Ram Charitar with the accused.

Therefore, from the above, I find that the accused has raised probable defence which is duly supported and corroborated by defence witness and further the cheque is found to be fabricated. These findings are correct as per evidence and law. In no way, these findings can be held as perverse or against the evidence. Nothing has been pointed out as to what illegality has been committed by the Court below. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to what material evidence has not been considered by the Court below.

From the above, I find that the findings given by the learned Judicial Magistrate Ist Class, Chandigarh, acquitting the accused are correct as per evidence and law and do not require interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378(4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

September 16, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No