

**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

Mamta
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Criminal Misc.No.A-1194-MA of 2016(O&M)

Date of decision: 25th July, 2016

Karnail Singh son of Mehta Ram

...Applicant

Versus

Karnail Singh son of Mam Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Raman Singh Dhanda, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant Karnail Singh son of Mehla Ram has filed the application under Section 378 (4) Cr.P.C. against respondent Karnail Singh son of Mam Chand, for grant of leave to file an appeal against the judgment of acquittal dated 18.03.2016, passed by the Sub Divisional Judicial Magistrate, Indri (Karnal).

It is mainly stated in the application that accompanying appeal has been filed which is likely to succeed. It is further stated that the judgment of acquittal of accused-respondent under Section 138 of the Negotiable Instruments Act, 1881 has caused grave miscarriage of justice which has necessitated the applicant to seek leave to file an appeal. It is prayed that applicant be granted leave to file an appeal against the judgment dated 18.03.2016, passed by the learned Sub Divisional Judicial Magistrate, Indri (Karnal).

Brief facts of the case are that M/s Arya Trading Company is a proprietorship firm of complainant. The accused is a farmer by profession and he is having agricultural land. He was a customer of complainant firm and had been selling his agricultural produces at the shop of the complainant.

In order to meet out his contingencies for purchasing fertilizers, seeds and other household expenses, the accused used to take advance amount from the complainant from time to time. The accused, in order to discharge his legal and enforceable debt and liability, issued a cheque No.044066 dated 03.12.2010, drawn at Punjab National Bank, Workshop, Jagadhari, District Yamuna Nagar, for a sum of Rs.5,60,000/- out of his account No.0715000101303254 in favour of the complainant firm. The cheque, on presentation, was received back with the reasons/remarks 'insufficient funds'. Legal notice was issued. When the amount was not paid then the complaint was filed.

The learned trial Court, after appreciation of evidence, acquitted the accused vide judgment dated 18.03.2016.

Aggrieved against the impugned judgment of acquittal, the applicant has preferred the instant application for grant of leave to file an appeal.

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

Perusal of the impugned judgment dated 18.03.2016, passed by the learned Sub Divisional Judicial Magistrate, Indri (Karnal), shows that the said judgment has been passed by appreciating the evidence in the right perspective. Nothing has been pointed out as to which material evidence has been misread and as to which material evidence has not been considered by the Court. Nothing has been pointed out as to how the findings returned by the learned trial Court are perverse i.e. against the evidence. Nothing has been pointed out as to what illegality has been committed by the learned Court below while acquitting the accused. Perusal of the complaint itself

shows that the complainant is running the commission agency. He has not produced the account books, maintained by him. Only photo copies have been produced which are inadmissible in evidence. Even the Accountant, who has made the entry in the account, has not been produced. No particulars of loan transaction has been given on which date, month or year how much money has been given to the accused. There is also nothing regarding selling of the crops and what amount has been adjusted. There is no document on the record to prove the loan transaction. Learned trial Court has also discussed the law on the points in the judgment. Though presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant but it is settled law that the accused can rebut the presumption even from the evidence of the complainant. The accused has taken the defence that cheque in dispute was misused by the complainant and he never issued cheque in discharge of his liability. The defence raised by the accused is probable and the presumption under Section 139 of the Negotiable Instruments Act is rebutted.

In view of the above discussion, this Court finds that the judgment, passed by the learned trial Court is correct and as per evidence and law and no ground is made out for grant of leave to file an appeal.

Accordingly, the instant application stands dismissed.

25th July, 2016
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(INDERJIT SINGH)
JUDGE