

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-936-MA of 2013

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Date of decision:28.9.2016

Ved Parkash

...Applicant

v.

Khushi Ram

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Budhwar, Advocate for the applicant.

Mr. S.K. Gupta, Advocate 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 Khushi Ram for grant of leave to appeal against the judgment dated 18.9.2013 passed by learned Judicial Magistrate Ist Class, Kurukshetra, vide which the accused has been acquitted of the charge under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

It has been mainly stated in the application that the applicant is filing the accompanying appeal, which is likely to succeed as per the grounds taken therein. The learned Judicial Magistrate Ist Class, Kurukshetra, dismissed the complaint of the applicant/complainant without appreciating the facts, evidence, law and other documents proved on record by leading the cogent and convincing evidence. The learned trial Court has

not applied the judicious mind while passing the judgment dated 18.9.2013.

It has been prayed that leave to file appeal may be granted.

From the record, I find that Ved Parkash filed complaint under Sections 138/142 of the NI Act against Khushi Ram. It is mainly stated in the complaint that to discharge his legal liability on account of borrowed amount by accused, he issued a cheque No.079759 dated 9.5.2008 for ₹3,50,000/-. When this cheque was presented for encashment, it was returned back with the remarks “funds insufficient”. Legal notice was given. When the amount was not paid, then the complaint was filed.

The learned Judicial Magistrate Ist Class, Kurukshetra, vide judgment dated 18.9.2013 after discussing the evidence acquitted the accused.

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.

Mr. S.K. Gupta, learned Advocate has put in appearance on behalf of the respondent and contested this application.

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

I have gone through the record specially, the judgment dated 18.9.2013 passed by the learned Judicial Magistrate Ist Class, Kurukshetra. There is nothing on the record that the findings recorded by the learned trial Court are perverse or against the evidence. There is nothing 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. The defence of the accused in the present case is that neither he received any amount of ₹3,50,000/- nor any question to make the payment of huge amount does arise. Rather, he is running a tailoring shop. He borrowed a sum of ₹15,000/-. He was to repay a sum of ₹18,000/- within one month. The said amount was repaid. He contended that at the time of making payment of ₹15,000/- the complainant obtained blank signed cheque as security, which was later on misused by filling huge amount. It is also the case of the accused that the complainant is in the habit to file complaints under Section 138 of the NI Act against various persons whosoever made money transaction with him after giving blank signed cheque. The accused placed reliance on documents Ex.D.1 to D.15 on the file.

First of all in the present case, there are no particulars mentioned and no documents have been placed on record as to when and where this amount was paid. PW-2 Bhim Singh in his cross-examination categorically stated that he did not know as to when the complainant had paid amount to the accused. PW-3 Ram Pal categorically stated that he did not know month, year and date regarding payment of ₹3,50,000/- by the complainant. The complainant also could not tell the date, month or year regarding the payment of ₹3,50,000/- to the accused. The complainant has not produced any income-tax record. He has also not furnished the statement of accounts issued by the Bank. The Court held that the accused is running a tailoring shop and no person would give a loan amount of

₹3,50,000/- to a tailor without getting any security document executed from him. The Court below also discussed the documents Ex.D.1 to Ex.D.12 placed on the record vide which the complaints have been instituted by the present applicant against Sahab Singh, Raj Kumar alias Raju, Subba Singh, Babu Ram, Chuhan Singh, Naresh Kumar, Brij Pal, Rohtash, Karambir, and Shanti Devi. I have also gone through some of the complaints and the judgments placed on record, in which the case of the accused almost seems that he had taken a small amount from the complainant as alleged and given blank cheques which have been misused.

Keeping in view the evidence on record, I find that presumption under Section 139 of the NI Act has been rebutted by the accused by raising probable defence which is duly supported from the evidence of the complainant as well as the defence evidence. These findings given by the learned Judicial Magistrate Ist Class are correct as per evidence and law which 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 28, 2016.

(Inderjit Singh)
Judge

hsp

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