In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1007-MA of 2015

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Date of decision:19.1.2016

Nanak Chand

...Applicant

v.

Laxman Arya

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Yash Dev Kaushik, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Laxman Arya-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.4.2015 passed by learned Additional Chief Judicial Magistrate, Palwal, whereby the complaint filed under Section 138/142 of Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') and Section 420 IPC has been dismissed.

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 further stated that the learned trial Court vide order dated 7.4.2015 wrongly and erroneously dismissed the complaint and acquitted the accused/respondent. It is also stated that the applicant will suffer an irreparable loss and injury in case leave to file appeal is not granted. It has been prayed that this application may be allowed and leave to file appeal be granted.

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

From the record, I find that the complainant-Nanak Chand filed complaint against Laxman Arya for the offence under Section 138/142 of the NI Act and Section 420 IPC. As per the facts mentioned in the complaint, the complainant and the accused were having good friendly relation with each other and accused borrowed a sum of ₹3.70 Lakhs from the complainant and in this regard accused executed a mortgage deed (Rehannama) in favour of complainant on 2.7.2008 in the office of Sub Registrar, Palwal in presence of witnesses and accused assured to complainant that he will return the same amount within two years and after two years the complainant demanded ₹3.70 Lakhs and accused said that at this time he is in dire need of ₹7 Lakhs more and assured the complainant that he will return the total amount with interest in the year February 2014 and the accused also borrowed ₹7 Lakhs on 14.2.2014 in good faith. The accused in discharge of said liability/debt due against the accused, issued two cheques No.470878 dated 26.2.2014 for ₹7.50 Lakhs and No.470879 dated 26.2.2014 for ₹7.50 Lakhs in favour of the complainant. On presentation of the cheques, these were returned with the remarks "funds insufficient". Legal notice was issued. When the payment was not made, the complaint was filed.

After the appreciation of the evidence, the learned Additional Chief Judicial Magistrate, Palwal acquitted the accused of the charges framed against him.

At the time of arguments, nothing has been argued by the learned counsel for the applicant as to how the findings given by the learned Additional Chief Judicial Magistrate, Palwal, are against the evidence and law. Nothing has been pointed out as to which material evidence has been misread. Nothing has been argued as to which material evidence has not been considered by the Court. From the records, I find that the findings given by the Court below are correct as per evidence and law. In no way, these findings can be held as perverse. There is nothing on the record from where it can be said that any evidence has been misread by the Court below. Rather, the evidence on record has been correctly appreciated in right perspective by the Lower Court. There is no document on record to show the withdrawal of any amount. It is a huge amount which the complainant in his alleged version had been given to the accused, but there is no documentary evidence on record to show from where this amount had been withdrawn and given to the accused. No security document had been taken from the accused regarding the huge amount which the complainant states he had given to the accused as loan.

On the other hand, the accused had examined two witnesses in defence and both have deposed that an amount of ₹1,90,000/- was taken on account of marriage of his son by Shiv Charan (father of accused) and out of this amount the whole amount was returned and these cheques were misused by the complainant.

From the lower Court record, I find that Ex.C.1 has been placed on record which is mortgage deed (Rehannama). This document has been executed not by the accused but by Shiv Charan for ₹3,70,000/-. This mortgage deed has not been executed by present accused Laxman Arya.

Keeping in view the facts and circumstances of the present case, I find that even for ₹3,70,000/- this mortgage deed has been executed. It is a secured loan and mortgage has to be redeemed after paying this amount and there is no necessity to pay this amount by cheques. Secondly, this mortgage deed has been executed not by the accused but by his father. So, there was no pre-existing liability to pay even this amount of ₹3,70,000/- against the present accused Laxman Arya.

Therefore, from the above discussion, I find that the presumption under Section 139 of the NI Act has been rebutted and the complainant has failed to prove the existing liability and his capacity to pay such a huge amount to the accused. Therefore, from the above, I find that the impugned judgment passed by the learned Additional Chief Judicial Magistrate, Palwal is correct, as per evidence and law and does not require any interference from this Court.

Therefore, I do not find any ground for grant of leave to file appeal against the impugned judgment passed by the learned Additional Chief Judicial Magistrate, Palwal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

January 19, 2016. **(Inderjit Singh)**
Judge

hsp