

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1067-MA of 2014

.....

Date of decision:7.1.2016

Dhanna Ram

...Applicant

v.

Megh Nath Saini

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Brijender 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 Megh Nath Saini-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 17.5.2014 passed by learned Judicial Magistrate Ist Class, Kurukshetra.

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 findings of the learned Judicial Magistrate Ist Class, Kurukshetra are based on surmises and conjectures and also against the facts and circumstances and against the law. It has been prayed that the application may be allowed and leave to file appeal may be granted against the

judgment of acquittal dated 17.5.2014 passed by learned Judicial Magistrate Ist Class, Kurukshetra.

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

As per the record, Dhanna Ram-complainant filed a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') against Megh Nath Saini. It is stated in the complaint that the accused issued a cheque bearing No.868456 dated 5.8.2011 for ₹2,50,000/- to the complainant for discharge of his legal liability. The cheque was presented for encashment, which was returned with the report "funds insufficient". Legal notice was issued. When the amount was not paid, the complaint was filed.

After the closing of the evidence, the accused was examined under Section 313 Cr.P.C. In his defence, the accused examined P.K. Gupta, Officer of Punjab National Bank, Pipli as DW-1.

After hearing learned counsel for the parties, the learned Judicial Magistrate Ist Class, Kurukshetra vide judgment dated 17.5.2014 acquitted the accused.

A perusal of the record shows that in the complaint, there is nowhere mentioned as to what type of legal liability was for discharge of which the cheque was issued. There is no mention as to whether it was a friendly loan or whether any commercial transaction took place between the parties. There is nothing in the complaint regarding the same.

At the time of arguments, learned counsel for the applicant

argued that it was a loan, but there is no document on record to prove the liability.

As per the record Ex.R.1, which is reply to the legal notice dated 3.9.2011, the accused has specifically mentioned that no amount was ever taken by him from the complainant. It is the case of the accused that two blank cheques were given to one Shiv Charan Singh as a token of security. Further, the accused proved Ex.R.2 and Ex.R.3, which are the receipts issued by the complainant in which it has been specifically mentioned that there is no balance against the accused. The complainant when appeared into the witness box admitted that the writing on the cheque is in different inks with different pens. In cross-examination, the complainant has deposed that he handed over the money to the accused after withdrawing the same from Punjab National Bank, however, no such document has been produced. In view of these facts, it has been held that from the perusal of the whole complaint, it is evident that not a single word or fact has been mentioned by the complainant as to what was the legal liability in favour of the complainant. The Court below while appreciating the cross-examination of CW-1 held that the complainant stated that he gave the amount to the accused after withdrawing the same from his account. He specifically deposed that initially he gave ₹50,000/- to the accused and thereafter, he gave ₹1,80,000/- in two times i.e. ₹90,000/- on each time after withdrawing the same from the bank, but no bank account has been placed on record.

The learned Judicial Magistrate Ist Class, Kurukshetra, after

discussing the law and the evidence in right perspective acquitted the accused. From the perusal of the impugned judgment, I find that nothing has been pointed out at the time of arguments as to which material evidence has been misread and which material evidence has not been considered by the Court below in right perspective and as to how the findings given by the learned Judicial Magistrate Ist Class, Kurukshetra, are perverse. From the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Kurukshetra, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

January 7, 2016.

(Inderjit Singh)
Judge

hsp