

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.21938 of 2015
and
Criminal Misc. No.A-1163-MA of 2015

.....

Date of decision:25.2.2016

Satvir Dhariwal

...Applicant

v.

Nirmala Devi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen Batra, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.21938 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 2 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1163-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Nirmala Devi-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 20.4.2015 passed by learned Sub Divisional Judicial Magistrate, Anandpur Sahib, whereby the complaint filed by the complainant/applicant for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been

dismissed and the accused/respondent has been acquitted.

It has been mainly 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 has been further stated that the judgment of acquittal passed by the learned trial Court is against the evidence on record and suffers from material irregularity and illegality and cannot be sustained. It has been prayed that the application may be allowed and in the interest of justice leave to file appeal may be granted against the judgment of acquittal.

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

From the record, I find that complainant-Satvir Dhariwal filed complaint against Nirmala Devi-accused/respondent for the offence under Section 138 of the NI Act. It is stated that the accused being close to the complainant, in the month of May 2010 borrowed an amount of ₹80,000/- from the complainant for domestic purpose with a promise to return the same by the end of May 2011, but she miserably failed to keep her promise. It is further stated that after repeated requests, the accused in discharge of her legal liability issued cheque bearing No.239223 dated 23.2.2012 for ₹80,000/- which on presentation for encashment returned back with the remarks “funds insufficient”. Legal notice was issued. When the payment was not made, then the complaint was filed.

The learned Sub Divisional Judicial Magistrate, Anandpur Sahib, after appreciating the evidence acquitted the accused. It is a case of

the accused that she had not issued cheque in question to the complainant and that the complainant had procured the said cheque by misrepresenting her. She also pleaded false implication. It is also the case of the accused that she never borrowed any amount from the complainant nor issued any cheque in discharge of any legal debt. The Court below after appreciating the evidence held that there is nothing in the complaint nor during the examination-in-chief that as to how he came into contact with the accused or whether the accused was his relative. The complainant in the complaint has not stated anything as to from where the said amount of ₹80,000/- was arranged by him and given to the accused. During cross-examination, the complainant admitted that some amount was withdrawn by him from his account maintained in Punjab & Sind Bank and some amount was lying with him and the complainant himself produced on record his account statement for the year 2010. As per that statement, no amount was withdrawn in May 2010 by the complainant which means the complainant had made false statement during his cross-examination that he had withdrawn some amount from his account, whereas there is no such entry of withdrawal in the month of May 2010. It is also held that no date had been mentioned on which loan was given. No document was scribed while advancing the amount. The complainant is running a shop and is an income-tax payee and filing income-tax return, but he stated that he is not maintaining any account books which the Court had held as not believable. The Court below while relying on the law laid down by the Hon'ble Supreme Court held that the presumption under Sections 118 and 139 of the

NI Act has been duly rebutted. The findings given by the learned Sub Divisional Judicial Magistrate are correct as per evidence and law. In no way these findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

Therefore, the findings given by the learned Sub Divisional Judicial Magistrate, Anandpur Sahib, 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. Consequently, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

February 25, 2016.

(Inderjit Singh)
Judge

hsp