

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1185-MA of 2015

.....

Date of decision:25.4.2016

Kalu Ram

...Applicant

v.

Munish Rai

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vimal Kumar Gupta, 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 Munish Rai-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 14.1.2015 passed by learned Judicial Magistrate Ist Class, Yamunanagar at Jagadhri.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 14.1.2015 passed by learned Judicial Magistrate Ist Class, Yamunanagar at Jagadhri, which is likely to succeed on the grounds mentioned therein. It has been stated that if the applicant is not permitted leave to file an appeal against the impugned judgment, the applicant would suffer an irreparable loss and injury.

Therefore, it has been prayed that the 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 Kalu Ram-complainant filed complaint against Munish Rai-respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). It is stated in the complaint that in discharge of his existing liability towards the complainant the accused had issued a cheque bearing No.697681 dated 11.4.2012 in the sum of ₹3,60,000/-, which on presentation received back with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, then the complaint was filed within time.

The learned Judicial Magistrate Ist Class, Yamunanagar at Jagadhri, vide impugned judgment dated 14.1.2015 acquitted the accused.

At the time of arguments, nothing has been pointed out as to how the findings given by the learned Judicial Magistrate Ist Class, Yamunanagar at Jagadhri, are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. There is nothing on the record that the findings are against the law.

Frist of all there is nothing in the complaint as to what was the liability for which the cheque was issued. No particulars had been mentioned as to on which date, month or year this liability arose against the accused and how and where the alleged amount was given nor any material etc. has been produced. Nothing is there in the complaint regarding the

demand made by the complainant of his amount. There is no documentary evidence produced on record to show this transaction of ₹3,60,000/-. No income-tax return or record of any type has been produced to show this transaction. The complainant in cross-examination stated that he had retired since 31.8.2011. He also stated that he does not know the name of the father of the accused or house number and he does not know even the name of the business firm of the accused and volunteered to state that he merely has acquaintance with the accused and there are no friendly relations with him. This fact rather shows that no ordinary person will lend amount of ₹3,60,000/- without getting any receipt or any security document. It is specifically stated that when the money was given by the complainant nothing was reduced into writing. The complainant retired as Class-IV employee from Northern Railway Jagadhri Workshop. He also stated in cross-examination that he does not know whether the cheque in question has been filled up with two pens and refused the suggestion that accused had never issued the cheque in question to him and the accused does not have any legal liability to discharge towards him. CW-2 official of PNB has stated that the cheque in question was issued by the Bank to M/s Yatin Associates. The accused got examined himself as DW-1 and stated that the cheque in question has neither been filled up by him, nor it bears his signatures and he further state that he does not even know the complainant. He refused the suggestion that the complainant had purchased construction material from him. The learned Court below in the facts and circumstances held that the complainant failed to prove his case specially the loan

transaction when the signatures on the cheque as well as loan transaction had been denied by the accused. From the perusal of the findings given by the Court below, I find that these findings are as per evidence and law. The Court below also discussed regarding the capacity of the complainant to lend such a huge amount, who had retired in the year 2011 as a Class IV employee and remained idle at his house till August 2012.

From the above discussion, I find that the findings given by the learned Judicial Magistrate Ist Class are correct as per evidence and law and do not require any interference from this Court.

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

April 25, 2016.

(Inderjit Singh)
Judge

hsp