

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5443 of 2016
and
Criminal Misc. No.A-295-MA of 2016

.....

Date of decision:15.3.2016

Balbir Singh

...Applicant

v.

Sukhwinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Atul Goyal, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.5443 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 55 days in filing the criminal miscellaneous application for grant of leave to file appeal and appeal is allowed.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-295-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sukhwinder Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 10.8.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 impugned judgment dated 10.8.2015 of acquittal has been wrongly passed by the learned trial Court on the basis of finding which is absolutely perverse and against the facts proved on record. 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-Balbir Singh filed complaint against Sukhwinder Singh-accused/respondent for the offence under Section 138 of the NI Act. As per the complainant's version, the complainant gave a sum of ₹10 lacs to the accused for a short period. In order to discharge his pre-existing legally enforceable liability towards the complainant, the accused issued a cheque bearing No.831678 dated 12.7.2012 for ₹10 Lacs. When the cheque was presented for encashment, it was returned back with the remarks "funds insufficient". Legal notice was issued. When the amount was not paid, the complaint was filed within limitation.

The complainant examined himself as CW-1 and placed on record documents and closed his evidence.

On the other hand, the accused took probable defence while

recording his statement under Section 313 Cr.P.C. that the said cheque was issued as security to the son of the complainant, namely, Manjit Singh, who was running committees under the name of Saluja Sale Promotion Scheme. The complainant has no concern with the cheque. He has cleared all the balance of the son of the complainant and nothing is due against him. The complainant falsely implicated him, he never issued any cheque to the complainant.

A perusal of the complaint itself shows that no particulars have been given in the complaint on which date, month and year this loan of ₹10 Lacs was given to the accused. There is no document on record to prove this loan transaction. No income-tax return has been placed on record to show that this amount had been mentioned in the income-tax return. The complainant has not produced any cogent evidence on record to show his capacity to lend this huge amount. No security document has been taken by the complainant at the time of granting the loan. Further, it has been discussed by the learned trial Court that the complainant has no immovable property in his name. The complainant had failed to produce any record/document which shows that such a huge amount of ₹10 Lacs was lying with him in his bank account or he has taken this amount from his relatives. Otherwise also, there is nothing on record to show that the complainant is close friend of the accused to whom he had given ₹10 Lacs without even taking any security document. Otherwise also, non-mentioning of the date, month and year when the loan was granted and non-mentioning of date as to when the demand for return of the amount had been made and

there being neither any security document nor there is any other document to show the loan transaction, is fatal to the complainant case. The accused had taken the probable defence. It is proved on the record that the son of the complainant is running the committees. Documents Ex. DA to Ex.DD had been placed on record to show the payment by the accused to the son of the complainant for the committees. The probable defence of the accused that this cheque was given as security cheque to the son of the complainant in the facts and circumstances is supported and corroborated by cogent evidence. Therefore, the presumption under Section 139 of the NI Act has been duly rebutted by raising probable defence by the accused. In no way, the judgment dated 8.10.2015 passed by the learned Judicial Magistrate Ist Class, Ludhiana, can be held as perverse. Rather, the evidence has been appreciated by the learned trial Court in right perspective. 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. Therefore, the findings recorded by the learned Judicial Magistrate Ist Class, Ludhiana, are correct as per evidence and law which 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.

March 15, 2016.

(Inderjit Singh)
Judge

hsp