

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1215-MA of 2015

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Date of decision:19.2.2016

M/s Krishna Finance Corporation

...Applicant

v.

Seema Rani

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Arora, 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 Seema Rani-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 1.6.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the complaint filed for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act') against the accused/respondent has been dismissed.

It is 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 is further stated that the applicant has a *prima facie* case. The disputed cheque was validly issued by the respondent in recognition of her liability towards the

complainant. The learned trial Court has not appreciated the facts properly. 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, specially the judgment dated 1.6.2015 passed by the learned Judicial Magistrate Ist Class, Jalandhar.

As per record, M/s Krishna Finance Corporation-complainant filed complaint against Seema Rani-accused under Section 138 of the NI Act. As per the complainant's version, the complainant-firm is dealing in finance and is a partnership concern. A loan was advanced to Manoj Kumar son of Des Raj, Sunita wife of Manoj Kumar and Sarika wife of Jassi and the present respondent-accused stood surety for the repayment of the loan. The loanees have defaulted and on demand the accused issued cheque bearing No.151812 dated 22.12.2012 for ₹2,85,000/- drawn on Punjab National Bank, Rama Mandi, Jalandhar in favour of the complainant. When the cheque was presented for encashment, it was received back with the remarks "payment stopped". Legal notice was issued. When the payment was not made, the complaint was filed.

The learned Judicial Magistrate Ist Class, Jalandhar, after discussing the evidence in the right perspective acquitted the accused. A perusal of the record shows that firstly no record has been produced regarding advancing the loan to Manoj Kumar, Sunita and Sarika. Secondly, the accused had taken the probable defence that she had taken loan of ₹30,000/- and ₹50,000/- from the complainant and at the time of

advancement of said loan to her, the complainant had taken blank signed cheques from her and had obtained her signatures on blank papers. She had also stated that she had returned the entire amount to the complainant, but it had not returned back the cheques given by her as security and misused the cheque. A perusal of the findings given by the Court below shows that CW-1 Lalit Kumar during his cross-examination admitted that ₹30,000/- and ₹50,000/-had been taken by the accused from the complainant and at the time of advancement of said loan, certain documents were got signed from her and cheque had been taken. He also admitted that the above said loan had already been paid by the accused. The defence counsel argued that the cheque in question is the same cheque and Ex.C.4 are blank signed papers taken from the accused at that time. The probable defence version had been duly supported from the cross-examination of CW-1. Further the complainant had not produced any document showing the advancement of loan to Manoj Kumar etc. and also that the cheque had been given for discharging the liability of these persons as surety.

The findings given by the learned Judicial Magistrate Ist Class, Jalandhar, are correct as per evidence and law and have been given after appreciating the evidence in right perspective, which do not require any interference from this Court. The findings, in no way, can be held as perverse nor anything has been shown at the time of arguments that any material evidence has not been considered by the Court below or it has been misread by the Court. The presumption under Section 139 of the NI Act has been rebutted by the accused by raising probable defence which is

supported and corroborated from the cross-examination of the complainant.

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 19, 2016.

(Inderjit Singh)
Judge

hsp