In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1281-MA of 2015

.....

Date of decision:5.1.2016

Mithlesh

...Applicant

v.

Vinod Maheshwari

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. M.S. Sidhu, 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 Vinod Maheshwari-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, Hisar.

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 Court below has wrongly and illegally dismissed the complaint filed by the applicant/appellant while adopting the hyper technical approach and failed to appreciate the oral as well as documentary evidence produced by the applicant/appellant in accordance with 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 1.6.2015 passed by learned Judicial

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Magistrate Ist Class, Hisar.

From the record, I find that Mithlesh filed complaint against Vinod Maheshwari under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act'). It is mainly stated in the complaint that the accused was having friendly terms with the complainant and he approached the complainant for advancing a friendly sum of ₹3 Lakhs with the assurance to return the same in a very near future. It is stated that the said sum was given by the complainant to the accused being having friendly terms with him. It is also stated that in discharge of his aforesaid existing, outstanding and legally enforceable liability, the accused issued a cheque bearing No.591360 dated 19.7.2013 for ₹3 Lakhs, which on presentation was returned with the remarks “account closed”. Legal notice was issued and when the amount was not paid the complaint was filed.

The learned Judicial Magistrate Ist Class, Hisar, after appreciating the evidence acquitted the accused.

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

From the impugned judgment, I find that the learned Judicial Magistrate Ist Class while discussing the law held that the presumption can be rebutted by the accused either by leading specific evidence or from the preponderance of probabilities as arisen from the material available on the file and the accused need not to step into the witness box for rebutting the same. The Court below after discussing the evidence held that PW-1 complainant placed on record her duly sworn affidavit Ex.CW.1/A, wherein

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she has testified the version of the complaint. In cross-examination, she deposed that the loan was given by her on 18.1.2012, but no writing was executed between the parties. She further deposed that she had not mentioned in her affidavit as to how much amount of loan was given. Thereafter, she deposed that loan was given in the sum of ₹4.5 Lakhs. She had been further cross-examined, wherein she has deposed that she gave loan to the accused on 13.2.2012. She also stated that she has mentioned this date in her legal notice, affidavit and complaint.

The Court below after perusing the statement of PW-1 Mithlesh found that as per the deposition loan in the sum of ₹4.5 Lakhs was advanced by the complainant to the accused, whereas in the complaint she had contended that she gave friendly loan in the sum of ₹3 Lakhs to the accused and she had not mentioned the date of advancing the loan in her complaint, affidavit or legal notice. The Court below held that this itself falsified the version of the complainant. In cross-examination, she had also deposed that she gave loan amount to the accused by selling her plot. When further cross-examined, she had deposed that she did not know to whom the plot was given. She had even failed to tell the plot number. Merely, saying that the plot was sold is not sufficient to prove that she sold her plot in the sum of ₹3 Lakhs and this amount was given by her to the accused as loan. She had placed on record photostat copy of the sale deed Ex.P.2, but that document is not admissible in evidence. The Court below further held that even if it is considered, even then, it has been mentioned in the document Ex.P.2 that plot was sold for an amount of ₹2,10,000/- whereas the loan

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amount is ₹3 Lakhs. The Court below further held that the complainant stated that she had deposed that cheque was given by the accused on 19.7.2013 to her husband, which was handed over by her husband to her and returned by the bank. She also stated that she had not seen the return memo. Though the complainant had denied that her husband Darshan Lal Sharma, Vinod Maheshwari and Sunil Kumar are doing business together but the accused had placed on record agreement Ex.D.1, wherein it has been clearly mentioned that an amount in the sum of ₹10,50,000/- was given by Darshan Lal, Vinod Maheshwari and Sunil Kumar to some Suresh Saini, which shows that there was business transaction between them. The Court below from the evidence on record held that the complainant failed to prove the legal enforceability of the debt.

So, in view of these facts the Court below has correctly held that the presumption under Section 139 of the NI Act has been duly rebutted. From the record, I also find that no particulars of loan have been given in the complaint. Nothing has been mentioned when the loan was demanded by the accused from the complainant and when this amount was to be returned. No documentary evidence has been produced on record to show that the loan was given to the accused. Neither any income-tax return has been produced nor any other cogent evidence has been placed on record to show that the loan was given to the accused as alleged by the complainant.

Keeping in view the facts and circumstances of the present case, I find that the findings given by the Court below are correct, as per

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evidence and law. In no way, these findings can be held as perverse. 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 in right perspective. The findings given by the learned Judicial Magistrate Ist Class, Hisar, 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 5, 2016. **(Inderjit Singh)**
Judge

hsp

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