

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.2060 of 2015
and
Criminal Misc. No.A-133-MA of 2015

.....

Date of decision:12.5.2016

Bhagwinder Singh

...Applicant

v.

Kulwant Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gitish Bhardwaj, Advocate for the applicant.

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Inderjit Singh, J.

Criminal Misc. No.2060 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 67 days in filing the criminal miscellaneous application seeking to leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.M-133-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 372 read with Section 378(4) Cr.P.C. against Kulwant Singh etc.-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.9.2014 passed by learned Judicial Magistrate Ist Class, Fatehgarh 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 No.1 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 learned trial Court has wrongly come to a finding that conduct of the appellant/complainant is not prudent and that the applicant/complainant has neither proved any loan agreement nor has claimed any interest on ₹10 Lacs. The learned trial Court has wrongly held that the evidence led by respondent No.1/accused is more acceptable than the complainant. 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-Bhagwinder Singh filed complaint against Kulwant Singh-accused/respondent for the offence under Section 138 of the NI Act. It is stated in the complaint that accused had borrowed a sum of ₹6,46,000/- from the complainant with a promise to return the same after some time because the accused had good terms with the complainant. In order to discharge the legal liability, he issued cheque No.472865 dated 30.5.2011 for ₹6,46,000/- drawn on Punjab National Bank, Branch Badali Ala Singh in favour of the complainant. On

presentation, the cheque was returned back with the remarks “funds insufficient”. Legal notice was issued. When the amount was not paid, the complaint was filed well within time. The complainant examined CW-1 Amarjit Dugg, Head Cashier, Punjab National Bank, who brought the record. He also examined Hans Raj Clerk, Oriental Bank of Commerce, Sirhind as CW-2, who proved the original cheque. Thereafter, he himself examined as a witness as CW-3.

At the close of complainant's evidence, statement of the accused was recorded under Section 313 Cr.P.C. and incriminating circumstances appearing in the evidence were put to him. Accused denied to have committed the offence and pleaded false implication. In his defence, he tendered attested copy of FIR No.177 dated 1.11.2013 as Ex.R.1.

After going through the evidence on record, the learned Judicial Magistrate Ist Class, Fatehgarh Sahib vide judgment dated 9.9.2014 acquitted the accused.

I have gone through the findings given by the learned Judicial Magistrate Ist Class. These are correct as per evidence and law. In no way, the evidence can be held as perverse or against the law. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below or which material evidence has not been considered by the Court. The learned Magistrate held that the accused have already been convicted for the offence under Section 138 of the NI Act in a complaint of 2010 in which the parties are the same. The Court held that it

looks improbable that a person who had already not paid the amount and cheque has been dishonoured and complaint has been filed and has been convicted in that case filed by the present complainant then why the complainant will give ₹6,46,000/- after that and that is also without getting any security document executed from the accused. Otherwise also, a perusal of the record shows that there is not even a single document to show this loan transaction. No income-tax return has been placed on record. No receipt or any other document of any type has been produced to show that loan transaction. Even the documents regarding withdrawals of the money from the Bank etc. also not produced on the record. Even in the complaint, no particulars have been mentioned as to on which date, month or year this amount had been given and at which place and in whose presence. As in the earlier litigation the present accused has not been repaying the amount of earlier cheque then why the accused has given such a huge amount without getting any security document. As per the version of the complainant a sum of ₹3,54,000/- had already been blocked. There is nothing in the complaint as to how much amount was given as loan. There is no particulars when the demand was raised for return of the loan. The learned Magistrate further discussed that Ex.D.1 shows that the complainant stood as vendee on behalf of his son and sale deed of ₹7.10,000/- has been got executed. The said fact as well as Ex.D.1 is not disputed. The said document was produced by the complainant himself and as such, cannot be refuted. Such a huge transaction after complaint dated 27.7.2010 shows that an amount of ₹7,10,000/- was adjusted towards the debt of the complainant.

The said sale deed was much before the present complaint. In view of these facts, the Court held that the presumption under Section 139 of the NI Act has already been rebutted. I agree with the findings given by the learned Judicial Magistrate Ist Class, Fatehgarh Sahib completely. The findings given by the learned Judicial Magistrate Ist Class, Fatehgarh Sahib are as per evidence and law.

Therefore, from the above, 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.

May 12, 2016.

(Inderjit Singh)
Judge

hsp