

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-1330-MA of 2015

.....

Date of decision:5.1.2016

Darshan Lal Sharma

...Applicant

v.

Vinod Maheshwari

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. M.S. Sidhu, Advocate for the applicant.

.....

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 facts and record of the case properly. 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 Magistrate Ist Class, Hisar.

From the record, I find that Darshan Lal Sharma 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 ₹4 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.591361 dated 11.7.2013 for ₹4 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 complainant examined himself as CW-1 and tendered into evidence his duly sworn affidavit Ex.PW.1/A and produced documents Exs.C.1 to C.5.

The accused took the plea in the statement recorded under Section 313 Cr.P.C. that the complaint is false one and the witnesses are deposing falsely against him. The accused examined DW-1 Jitender Kumar, DW-2 Dilbag Singh and DW-3 Jitender Kumar.

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 record, I find that the findings given by the learned

Judicial Magistrate Ist Class are correct, as per evidence and law. The Court below has discussed the law on the point and specially 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 in cross-examination the complainant stated that he had given the loan to the accused on 18.1.2012, but no writing was executed. He gave loan amounting to ₹4 Lakhs to the accused through cheque, but no such cheque has been proved on the record. The learned Judicial Magistrate Ist Class, Hisar, also held that the fact that the loan was given through cheque has not been pleaded in the complaint. The Court below also held that the complainant has stated that he took loan in the sum of ₹4.5 Lakhs which was sanctioned in January 2012 and was received by him on 18.1.2012. He has further deposed that he has not shown this amount in his income-tax return. He also stated that he has not mentioned the date of his personal loan in his legal notice or complaint or in affidavit. The Court below after discussing the defence evidence found that as per the statement a sum of ₹4.5 Lakhs was credited in the account of the complainant on 18.1.2012 and further ₹4 Lakhs were paid to one Sushma Rani on 18.1.2012 through cheque bearing No.000066. Otherwise also, a perusal of the record shows that no date, month or year has been given in the complaint as to when the loan was given to the accused. There are no particulars at which place and in whose presence the loan was given. Further more, there is nothing on the

record as to when the loan was first demanded by the complainant from the accused. All these facts along with the fact that the version of the complainant was falsified from the defence evidence that the amount of ₹4 Lakhs was paid through cheque. As per the record, the personal loan was credited in the account of the complainant on 18.1.2012 and an amount of ₹4 Lakhs was paid to one Sushma Rani through cheque.

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. The complainant failed to prove the legal enforceable debt by leading cogent evidence. There is no document on record to prove the loan given by the complainant.

Keeping in view the above facts, I find that the findings given by the Court below are correct, as per 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