

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1278-MA of 2014 (O&M)

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Date of decision:22.1.2016

Shamshad Ali

...Applicant

v.

Surinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anil Chawla, 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 Surinder Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.6.2014 passed by learned Judicial Magistrate Ist Class, Rajpura, vide which the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 9.6.2014 passed by learned Judicial Magistrate Ist Class, Rajpura, which is likely to succeed on the grounds mentioned therein. It is further stated that a great prejudice and loss

will be caused to the applicant if this application is not allowed. Therefore, it has been prayed that the leave to file appeal be granted and the appeal against the impugned judgment dated 9.6.2014 be heard on merits in the interest of justice.

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

From the record, I find that Shamshad Ali-complainant filed complaint against Surinder Singh under Section 138 of the NI Act. The brief facts of the case as given in the complaint are that the accused along with some other persons entered into an agreement to sell his 15 Bighas 11 Biswas of land for ₹1,50,00,000/- with the complainant. On inquiry, the complainant came to know that there is a dispute of land and the accused could not sell the land and he had played fraud with the complainant. The complainant requested the accused to return ₹16.50 Lakhs paid by him. The accused in order to return the money issued cheque No.370822 dated 28.2.2007 for ₹16,50,000/-. The complainant presented the above cheque for encashment, which was returned with the remarks “payment stopped by the drawer”. Thereafter, legal notice was issued. As the payment was not made, the complaint was filed.

The learned Judicial Magistrate Ist Class, Rajpura, vide order dated 9.6.2014 after appreciating the evidence acquitted the accused.

After hearing learned counsel for the applicant and after going through the record, specially, the judgment passed by the learned Judicial Magistrate Ist Class, Rajpura, I find that the findings given by the learned

Judicial Magistrate Ist Class, Rajpura, in the impugned judgment are correct, as per evidence and law. In no way, these findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to why the findings given by the learned Judicial Magistrate Ist Class, Rajpura, are perverse i.e. against the evidence or law. 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 by the Court in right perspective. Rather, a perusal of the judgment shows that the learned Judicial Magistrate Ist Class, Rajpura, has correctly appreciated the evidence in right perspective.

In the present case, no written agreement to sell was executed for the purchase of land measuring 15 Bighas 11 Biswas for ₹1,50,00,000/-. No particulars have been mentioned regarding the date, month or year when this oral agreement took place. Nothing has been mentioned regarding the capacity of the complainant to pay such a huge amount of ₹16,50,000/-. Nothing has been mentioned, who were the other persons along with the accused, who entered into the agreement to sell the agricultural land. Again there is nothing that there was dispute regarding that land. Therefore, from the perusal of the record itself, it is clear that no particulars have been mentioned when this amount of ₹16,50,000/- had been paid. Again the amount of ₹16.50 Lakhs is a huge amount and it is stated to be paid in cash. There is no evidence on record to show from which bank this amount had been withdrawn for payment to the accused. The complainant is stated to be a Property Dealer etc. and also doing the business of tyres and liquor etc.

No income-tax return had been placed on the record nor there is any other document to show that this huge amount of ₹16.50 Lakhs had been given to the accused. Even the Income-tax return had not been produced. There is no mention of this transaction in the account books. This fact regarding paying ₹16.50 Lakhs orally and regarding the oral agreement without mentioning any date, month and year when it was executed and in whose presence it was executed, the presumption under Section 139 of the NI Act has been duly rebutted by the accused.

Therefore, keeping in view the above facts and circumstances, I find that the findings given by the learned Judicial Magistrate Ist Class, Rajpura, in the impugned judgment dated 9.6.2014 are correct, as per evidence and law which do not require any interference from this Court.

Therefore, from the above discussion, I do not find any ground to grant leave to file appeal. Hence, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

January 22, 2016.

(Inderjit Singh)
Judge

hsp