

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.25888 of 2014
and
Criminal Misc. No.A-1333-MA of 2014

.....

Date of decision:27.2.2016

Baljinder Singh

...Applicant

v.

Jasbir Kaur

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vijay Lath, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.25888 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 121 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1333-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Jasbir Kaur-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 24.1.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 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 Judicial Magistrate Ist Class, Jalandhar, has wrongly acquitted the respondent-accused vide its impugned judgment dated 24.1.2014, which has caused grave injustice to the applicant/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-Baljinder Singh filed complaint against Jasbir Kaur-accused/respondent for the offence under Section 138 of the NI Act. As per the averments made in the complaint, the accused had taken a friendly loan from the complainant and in order to discharge part of this legal debt/liability issued a cheque bearing No.034502 dated 24.9.2006 for the sum of ₹65,000/-. The cheque was returned back with the remarks "insufficient funds" when it was presented for encashment. Legal notice was issued, but when the payment was not made within the stipulated period, then the complaint was filed.

The complainant examined himself as CW-1 and closed his evidence.

When the accused was examined under Section 313 Cr.P.C., she took the plea that the complainant had not advanced friendly loan of ₹65,000/- to her as alleged in the complaint. The present complaint had been filed by the complainant against her with mala fide intention only to harass her. She had further pleaded that the complainant was neither friend of her nor she knew him personally. She has no legal liability towards the complainant for the cheque amount as claimed in the complaint. The accused in defence also examined DW-1 Sukhjinder Singh, Handwriting and Finger Prints Expert, Patiala and documents have been also tendered in evidence.

The learned Judicial Magistrate Ist Class, Jalandhar, vide impugned judgment dated 24.1.2014 acquitted the accused. From the record, specially the impugned judgment passed by the learned Judicial Magistrate Ist Class, Jalandhar, I find that, in no way, the reasoning given by the Court below can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

A perusal of the complaint itself shows that no particular regarding the date, month or year had been mentioned in the complaint on which the loan was given. Even the loan amount had not been mentioned in the complaint i.e. as to how much loan was given to the accused. There is also nothing on the record regarding the source of income of the complainant nor even the place at which the loan was given nor there is

anything in whose presence the loan was given. There is no document on record to show the loan transaction. No security document was got obtained from the accused. It is stated that this cheque has been issued to discharge part liability, but there is nothing which was the actual pre-existing liability. The probable defence version of the accused is that she had never taken any loan from the complainant nor he was her friend nor she issued cheque in question for discharge of pre-existing liability. Rather, the accused/respondent stated that blank signed cheque had been misused by the complainant. The Court after discussing the law laid down by the Hon'ble Supreme Court in John K. Abraham v. Simon C. Abraham and another, 2014 (1) Apex Court Judgment 020 (SC), acquitted the accused and also held that presumption under Sections 118 and 139 of NI Act has been rebutted by the accused. It is also held that learned counsel for the accused further stated that another litigation was going on between the parties as the complainant had got registered FIR No.65 dated 11.3.2004 for the offences under Sections 420 and 406 IPC at Police Station Division No.4, Jalandhar against the accused and her husband Parminder Singh on the ground that Parminder Singh had told him that he would execute the sale deed in respect of two shops in his favour and in lieu of this he had taken ₹4,00,000/- from him on different dates, but failed to execute the sale deed and when the complainant demanded his money back, Parminder Singh and his wife issued two cheques bearing Nos.034501 dated 27.10.2003 for ₹2 Lakhs and another cheque bearing No.093089 dated 27.10.2003 for the sum of ₹2 Lakhs. The said case was found to be false against the accused. Another complaint had

been filed by the complainant against the husband of the accused titled as “Baljinder Singh Vs. Parminder Singh” where the cheque in question is bearing No.093088 dated 24.9.2006 amounting to ₹65,000/- which is also of the same series. The Court below further held that the accused had got examined Handwriting and Finger Prints Expert Sukhjinder Singh as DW-1, who has proved on record the fact that handwriting of the accused which is Mark-Q.1 that is on the body part of the cheque in question did not tally with the specimen writing of Jasbir Kaur and this had been written by a different person, which corroborates the version taken by the accused.

Keeping in view the above facts, I find that presumption under Sections 118 and 139 of the NI Act has been duly rebutted by raising probable defence by the accused which is supported and corroborated by the other evidence.

Therefore, from the above, I find that the findings given by the learned Judicial Magistrate Ist Class, Jalandhar, 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. Consequently, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

February 27, 2016.

(Inderjit Singh)
Judge

hsp