

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.26698 of 2015
and
Criminal Misc. No.A-1424-MA of 2015

.....

Date of decision:19.1.2016

Nanak Chand

...Applicant

v.

Suman

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Yash Dev Kaushik, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.26698 of 2015:

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

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1424-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Suman-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.4.2015 passed by learned Additional Chief Judicial Magistrate, Palwal, whereby the complaint filed under Section 138/142 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and Section

420 IPC has been dismissed.

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 learned trial Court vide order dated 7.4.2015 wrongly and erroneously dismissed the complaint and acquitted the accused/respondent. It is also stated that the applicant will suffer an irreparable loss and injury in case leave to file appeal is not granted. It has been prayed that this application may be allowed and leave to file appeal be granted.

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

From the record, I find that the complainant-Nanak Chand filed complaint against Suman for the offence under Section 138/142 of the NI Act and Section 420 IPC. As per the facts mentioned in the complaint, the complainant and the husband of the accused were having visiting terms and accused borrowed a sum of ₹7,50,000/- from the complainant in the month of June 2013 for a period of one year and in discharge of said liability/debt accused issued one cheque No.53025 dated 8.5.2014 for ₹7,50,000/- in favour of the complainant, which on presentation was returned unpaid with the remarks “insufficient funds”. The complainant served legal notice, but the accused in spite of legal notice has failed to make the payment of the cheque in question, therefore, the complaint was filed.

After the appreciation of the evidence, the learned Additional Chief Judicial Magistrate, Palwal, acquitted the accused of the charges

framed against him.

At the time of arguments, nothing has been argued by the learned counsel for the applicant as to how the findings given by the learned Additional Chief Judicial Magistrate, Palwal, are against the evidence and law. Nothing has been pointed out as to which material evidence has been misread. Nothing has been argued as to which material evidence has not been considered by the Court. From the records, 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. There is nothing on the record from where it can be said that any evidence has been misread by the Court below. Rather, the evidence on record has been correctly appreciated in right perspective by the Lower Court.

The learned Additional Chief Judicial Magistrate, Palwal, after appreciating the evidence in right perspective specially the cross-examination of the complainant party held that the complainant admitted in cross-examination that Laxman Arya and his wife Suman came to him to borrow money and they demanded ₹5 Lakhs from him and he gave from his Bank on the same day and the accused gave a post-dated fulfilled cheque of this amount of forth coming date against this money. The Court below held that this cross-examination of this witness goes against his own evidence given in examination-in-chief in his affidavit Ex.PW.1/A, wherein the complainant stated that the accused borrowed ₹7,50,000/- in the month of June 2013 for a period of one year and in discharge of said liability she issued one cheque of ₹7,50,000/- in favour of him. However, in the cross-

examination, he himself admitted that accused borrowed ₹5 Lakhs and a cheque of ₹7,50,000/- was given on the very same day. The Court below disbelieved the complainant and held that either he is telling a lie in cross-examination or in his examination-in-chief and it is doubtful whether he gave ₹5 Lakhs to the accused or ₹7,50,000/- as stated in the examination-in-chief. No document has been placed on record that on which date it was given and what was the rate of interest. The complainant had also failed to show his availability and the source of this huge amount. No income-tax return had been placed on record. The complainant stated that he gave this amount from his bank, but no bank account statement had been placed on record. The Court below also held that it is also not clear as to why the accused gave cheque of ₹7,50,000/- when she took only ₹5 Lakhs.

Keeping in view the above facts and circumstances, the Court below held that the defence version that this cheque was given to the complainant when father of the husband of the accused borrowed ₹1,90,000/- for marriage of his son. The Court held that the accused has successfully rebutted the presumption under Section 139 of the NI Act and the complainant has failed to prove the existing liability and his capacity to pay such a huge amount to the accused. Therefore, from the above, I find that the impugned judgment passed by the learned Additional Chief Judicial Magistrate, Palwal is correct, as per evidence and law and does not require any interference from this Court.

Therefore, I do not find any ground for grant of leave to file appeal against the impugned judgment passed by the learned Additional

Chief Judicial Magistrate, Palwal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

January 19, 2016.

(Inderjit Singh)
Judge

hsp