

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.27114 of 2015
and
Criminal Misc. No.A-1438-MA of 2015

.....

Date of decision:4.3.2016

Pritpal Singh

...Applicant

v.

Jaspal Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Arora, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.27114 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 8 days in filing the application for grant of leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1438-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Jaspal Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.6.2015 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 applicant feels very much aggrieved against the impugned judgment dated 9.6.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, acquitting the respondent under Section 138 of the NI Act. It has also been stated that the case did not appear to have been properly appreciated by the learned trial Court. 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-Pritpal Singh filed complaint against Jaspal Singh-accused/respondent for the offence under Section 138 of the NI Act. It is mainly stated in the complaint that the accused had taken a friendly loan of ₹2,50,000/- from him and to discharge this liability, the accused issued a cheque bearing No.477032 dated 10.7.2013 for ₹2,50,000/- drawn on State Bank of India.

The learned Judicial Magistrate Ist Class, Jalandhar, vide impugned judgment dated 9.6.2015 after appreciating the evidence acquitted the accused. I have gone through the findings given by the

learned Judicial Magistrate Ist Class, Jalandhar. These are correct as per evidence and law. The evidence has been appreciated in right perspective. There is nothing in the judgment from which it can be held that it is perverse i.e. against the evidence. 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. The accused has raised the defence that he had never taken any loan as alleged by the complainant. He was working as a driver with the complainant and the cheque in question has been taken being blank signed by the complainant from him for the purpose of security against the job of driver, but the complainant has misused the cheque in question and has filed the present false complaint.

From the record, I find that no particulars have been mentioned regarding the loan of ₹2,50,000/- as to on which date, month or year this loan was given. There is no document which shows this transaction. There is nothing on the record to show that the complainant has alleged friendly relations with the accused. Further more, it is admitted in the cross-examination by the complainant that the accused is his driver, but this fact has not been mentioned in the complaint. Further more, if the accused is employee of the complainant, then, in no way, it can be held that the loan was given as friendly loan. The amount of ₹2,50,000/- has been given even without execution of any receipt or pronote. It looks improbable that employer, who is paying ₹3,000/- per month to his employee as driver, who is not having sufficient means to even maintain himself, will be advancing ₹2,50,000/- even without any document. The Court below in the facts and

circumstances held that the presumption under Section 139 NI Act has been rebutted by raising probable defence which is further supported by the cross-examination of the complainant.

Keeping in view the above facts and circumstances, I find that the findings given by the learned Judicial Magistrate Ist Class, Jalandhar, are correct as per evidence and law which 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.

March 4, 2016.

(Inderjit Singh)
Judge

hsp