

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.27544 of 2015
and
Criminal Misc. No.A-1456-MA of 2015 (O&M)

.....

Date of decision:28.11.2016

Harpreet Kaur

...Applicant

v.

Rohit Sondhi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. V.K. Sandhir, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.27544 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 200 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-1456-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rohit Sondhi-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 17.11.2014 passed by learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali), vide which the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the '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 there are many debatable points, which require appreciation of evidence, therefore, leave may be granted to the applicant to file appeal 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 Harpreet Kaur-complainant filed a complaint against Rohit Sondhi-accused/respondent under Section 138 of the NI Act. As per facts of the complaint, the accused in order to discharge his liability on account of payment of sale price of the land situated at Village Sante Majra, Tehsil Kharar, District S.A.S. Nagar (Mohali) belonging to the complainant, had issued cheque bearing No.003404 dated 24.6.2011, amounting to ₹61,00,000/- in favour of the complainant. When the complainant presented the above said cheque with her banker, it was returned with the remarks “insufficient funds”. Then, the complainant served legal notice upon the accused. The accused did not return the amount of the cheque in question, hence the complaint was filed.

After discussing the evidence in detail, the learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali), acquitted the accused vide judgment dated 17.11.2014. Aggrieved from the judgment, the appeal along with application under Section 378(4) Cr.P.C. seeking leave to file appeal

has been filed.

From the record, I find that first of all as argued the sale deed had been executed in favour of Devika Infrastructure, which was a registered entity. There is nothing in the complaint whether this Devika Infrastructure is proprietary firm of Rohit Sondhi or is a partnership firm or it is a Company. Devika Infrastructure has not been made as a party. Even this fact has not been mentioned as to whether Rohit Sondhi is still proprietor of the firm. When the sale deed had been executed in favour of Devika Infrastructure and the allegation is that the cheque in question was regarding remaining sale consideration of that sale deed, therefore, Devika Infrastructure is a necessary party and without impleading Devika Infrastructure Company, Rohit Sondhi cannot be held as vicariously liable. There is also nothing in the complaint as to whether the cheque had been issued from the account of Devika Infrastructure or from the personal account of Rohit Sondhi. If the cheque was issued from Devika Infrastructure, then Rohit Sondhi is not personally liable for payment of the remaining sale consideration and there was no liability against Rohit Sondhi personally. Secondly, I find that, at the time of arguments, learned counsel for the applicant has shown me the sale deed executed by Attorney of the present applicant in favour of Devika Infrastructure for ₹42 Lakhs. ₹12 Lakhs were received in cash and the remaining amount of ₹30 Lakhs were given vide two cheques amounting to ₹10 Lakhs and ₹20 Lakhs. It has been argued that both these cheques were got encashed. It is also written in the sale deed that the total amount had been received. If that is the case, then

no sale consideration remains to be paid. Learned counsel argued that the sale deed was executed for the less amount for saving stamp fee and the sale consideration was shown less to save the stamp fee, but there was no such pleading to support this argument. Thirdly, I find that in her cross-examination, the complainant stated that she had not entered into any agreement to sell with Devika Infrastructure. The sale deed was executed by one Punia and he has also received the full consideration against the sale deed executed by him. Volunteered Mr. Punia had received the entire sale consideration from the accused but he has not paid the same to her. It is also in the cross-examination of the complainant that the cheque in question Ex.C.1 was handed over to her by Mr. Punia. She also stated that she does not know as to who has filled her name in Ex.C.1. She also does not know who has mentioned the amount in words and in figure in Ex.C.1, i.e., cheque dated 24.6.2011. She also stated that she also cannot tell who has signed Ex.C.1 as the same is not signed in her presence. She stated that she entered into agreement with Mr. Chugh and then Mr. Chugh entered into agreement with Mr. Punia and Mr. Punia entered into agreement with Devika Infrastructure.

Keeping in view the evidence on record and the above discussion, I find that the findings given by the learned Judicial Magistrate Ist Class while discussing the cross-examination of the complainant in minute detail has rightly acquitted the accused. No illegality has been committed by the Court below. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to which

material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. There is also nothing on the record to show as to what illegality has been committed by the Court below.

Therefore, from the above I find that the judgment dated 17.11.2014 passed by the Court below is correct as per evidence and law and the findings have been given by appreciating the evidence in right perspective. Therefore, I find that the findings given by the Court below are correct as per evidence and law which do not require any interference from this Court and the same are upheld.

Therefore, I do not find any ground to grant leave to file appeal. Consequently, 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.

November 28, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No