

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.29892 of 2015 and  
Criminal Misc. No.A-1523-MA of 2015 (O&M)

.....

Date of decision:27.7.2016

M/s Punjab Kashmir Finance Ltd.

...Applicant

v.

Kanwarbir Singh

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Maninder Singh Dhindsa, Advocate for the applicant.

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**Inderjit Singh, J.**

Cr. Misc. No.29892 of 2015:

For the averments made in the criminal miscellaneous application, the delay of 529 days in filing the application for leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1523-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kanwarbir Singh for grant of leave to appeal against the judgment dated 15.1.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

It is mainly stated in the application that the accompanying

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appeal is being filed against the impugned judgment dated 15.1.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, which is likely to succeed on the grounds mentioned therein. The judgment of acquittal of the accused/respondent under Section 138 of the Act has caused grave miscarriage of justice. It has, therefore, been prayed that leave to appeal may be granted.

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

From the record, I find that M/s Punjab Kashmir Finance Limited-complainant filed complaint against Kanwarbir Singh-accused under Section 138 of the Act. It is mainly stated that the complainant is a limited Company and Shri Dalip Kumar, Sr. Section Officer is authorized by the Board of Directors of the Company vide resolution dated 30.9.2006 to file the complaint. It is also stated that in order to discharge the legal liability towards loan agreement dated 15.7.2005 regarding the payment of due instalments of vehicle, the accused issued a cheque bearing No.575143 dated 26.10.2006 for ₹9.28,487/- drawn on ICICI Bank Limited. It is also the case of the complainant that on presentation of the cheque it was returned back with the remarks "funds insufficient". The complainant issued legal notice. When the amount was not paid then the complaint was filed within time.

The learned Judicial Magistrate Ist Class, Jalandhar, after appreciating the evidence in its judgment dated 15.1.2014 acquitted the accused.

A perusal of the judgment passed by the learned Judicial Magistrate Ist Class, Jalandhar, shows that the same has been passed by appreciating the evidence in right perspective. 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. Nothing has been pointed out as to how the findings given by the learned Judicial Magistrate Ist Class, Jalandhar, are perverse and against the evidence or law. Nothing has been pointed out as to what illegality has been committed by the Court below. As per the record of the lower Court, the accused admitted that he had taken loan of ₹7 Lakhs from the complainant company on 15.7.2005 which was to be repaid in 59 instalments of ₹16,700/- each till 21.5.2010. He had paid an amount of ₹1,96,722/- till 21.11.2006 and also spent ₹60,000/- on insurance and the remaining balance due against the accused is ₹4,43,278/- only. From the record, I find that the learned Judicial Magistrate Ist Class, Jalandhar, also relied upon the order of this Court passed in FAO No.615 of 2012 (O&M), which is Ex.D.1, wherein this Court declared the ex-parte Arbitral Award dated 7.8.2007 passed by the Arbitrator for the sum of ₹9.14,615/- along with future interest @3% per month against the accused to be biased in favour of the complainant company and had held that the complainant company is only entitled to recover the sum of ₹4,43,278/- from the accused and any amount paid beyond ₹1,96,722/- including the sale proceeds of the vehicle is to be adjusted against the said amount. CW-1 Chhinder Singh had stated in his cross-examination that the complainant company is not ready to accept the amount of ₹4,43,278/- from

the accused.

The learned Judicial Magistrate Ist Class, Jalandhar, held that the complainant failed to prove that the amount of ₹9,28,487/- was legally recoverable debt or liability put against the accused. The Court below held that copy of statement of account Ex.C.5 has not been proved as per law. The Court below further held that CW-1 Chhinder Singh is not the authorized person to depose on behalf of the complainant company. On the basis of the original proceedings book, CW-1 stated during his cross-examination that it is nowhere mentioned earlier vide resolution dated 30.9.2006, wherein one Dalip Kumar was authorized to file and pursue the present complaint and moreover, that proceeding book did not contain any resolution vide which the authorization of Dalip Kumar was cancelled and Chhinder Singh was authorized on his place to pursue the present complaint. He admitted that there is no proceeding authorizing him in place of Dalip Kumar by whom the present complaint was filed.

Keeping in view the above discussion, I find that the findings given by the Court below are correct as per evidence and law.

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

July 27, 2016.

**(Inderjit Singh)**  
**Judge**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |