

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-157-MA of 2015

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Date of decision:10.5.2016

Vikas Garg

...Applicant

v.

Rohit Aggarwal

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Manish Joshi, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rohit Aggarwal-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, Chandigarh, 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 trial Court failed to appreciate the documents/evidence available on record in perspective manner and committed illegality by acquitting the accused. 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-Vikas Garg filed complaint against Rohit Aggarwal-accused/respondent for the offence under Section 138 of the NI Act. The brief facts of the complaint are that accused was working as Salesman under the complainant at M/s Sham Trading Company, Main Road, Mohali. The accused approached him qua loan of ₹2 Lacs and the same was advanced to him on 15.5.2011. The accused in order to discharge his liability qua the said loan, issued cheque No.264443 dated 5.9.2011 for ₹2 Lacs. The cheque on presentation was returned with the remarks “funds insufficient” Then legal notice was given and when the amount was not paid the complaint was filed well within time.

The accused raised the probable defence that the complaint is false and frivolous. Said cheque was blank signed security cheque given to the complainant at the time of joining his duties at M/s Sham Trading Company in the year 2009. He was not having liability qua the cheque amount. The complainant had misused the said cheque and filed the present complaint just to harass him. The accused examined DW-1 Ashok Gupta, Branch Manager, M/s Gora Mal Hari Ram Limited, who deposed regarding

joining of the accused in their firm and proved the salary slips of Rohit Aggarwal Exs.D.1 to D.10. Rohit Aggarwal deposed as DW-2. He stated that he joined M/s Gora Mal Hari Ram Limited on 6.5.2011 as Sales Representative on monthly salary of ₹6,005/- per month. He also stated that the complainant took blank cheque and security at the time of his joining and he left the job of the complainant firm in October-November 2010. He also deposed that he was not working with the complainant on 15.5.2011 and had not obtained any loan on that date. He joined M/s Gora Mal Hari Ram Limited on 6.5.2011. He also proved the information supplied under Right to Information Act i.e. documents Exs.D.13 to D.15 regarding the application and information supplied by Regional Provident Fund Commissioner, which is Exs.D.16 to D.18. He admitted that said cheque (Ex.C.1) bears his signatures and was handed over to Vikas Garg. DW-3 Sachin Soni, UDC, Karampura, ESI brought the summoned record Exs.D.20 to D.22.

The learned Judicial Magistrate Ist Class, Chandigarh after appreciating the evidence in right perspective acquitted the accused.

I have gone through the findings given by the learned Judicial Magistrate Ist Class, Chandigarh in the judgment dated 17.11.2014. The reasoning are as per evidence and law. In no way, the judgment passed by the learned Judicial Magistrate Ist Class can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below or which material evidence has not been considered by the Court. There is no document of any type on the

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record to show about this loan transaction. Admittedly, the accused was employee of the Company of the complainant, namely, M/s Sham Trading Company. The accused has raised probable defence that he had already left the company before the date on which it is stated that the accused had taken the loan. To support that defence, the witnesses have been summoned and the documents have been produced to show that at that time the accused was working with M/s Gora Mal Hari Ram Limited. The documents support and corroborate the probable defence version. There is also nothing on the record to show that even if the loan is given to the employee, why no security document like pronote or receipt etc. were obtained from him. There is also no record of the firm or income tax record etc. of any type to show this loan transaction. There is nothing on the record from where this amount was withdrawn etc. Even if it is taken that the accused was employee and loan was given there is no case of the complainant that the accused agreed to get deducted the loan amount from his salary.

From the above discussion, I find that the probable defence raised by the accused is supported and corroborated by defence evidence as well as from the cross-examination of the complainant. Therefore, the presumption under Section 139 of the NI Act has been duly rebutted by the accused. The findings given by the learned Judicial Magistrate Ist Class while acquitting the accused have been given by correctly appreciating the evidence as per law.

Therefore, from the above, I do not find any ground to grant leave to file appeal. Consequently, finding no merit, the criminal

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miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

May 10, 2016.

(Inderjit Singh)
Judge

hsp