

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1657-MA of 2015

.....

Date of decision:4.3.2016

Tirath

...Applicant

v.

Hira Lal

...Respondent

....

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

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Present: Mr. Shiv Kumar, 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 Hira Lal-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 30.7.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 vide the impugned judgment dated 30.7.2015, the

learned trial Court has wrongly acquitted the accused-respondent in complaint filed under Section 138 of the NI Act. 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-Tirath filed complaint against Hira Lal-accused/respondent for the offence under Section 138 of the NI Act. It is mainly stated in the complaint that the accused is well known to him. The accused borrowed a friendly loan of ₹10 Lacs from the complainant in the month of January, 2013 for his personal use. At the time of taking the said loan amount, the accused promised to repay the same to the complainant within a period of two-three months. After expiry of three months, when the complainant demanded his money back, then accused after admitting his legal liability issued a cheque bearing No.129196 dated 21.8.2013 for ₹10 Lacs. When the cheque was presented for encashment, the same was returned back with the remarks “payment stopped by drawer”.

After the appreciation of evidence, learned Judicial Magistrate Ist Class, Faridabad, vide impugned judgment dated 30.7.2015 acquitted the accused. I have gone through the findings given by the learned Judicial Magistrate Ist Class, Faridabad, which, in no way, can be held as perverse or against the evidence and law. 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 learned Judicial Magistrate Ist

Class, Faridabad, has appreciated the evidence in right perspective. The defence of the accused in the present case is that he never borrowed ₹10 Lacs from the complainant. He contended that, in fact, the cheque in question along with some other cheques were misplaced and the complainant somehow managed to get the cheque in question and misused the same. In the cross-examination, the complainant stated that money was advanced by him to the accused. The complainant stated that out of ₹10 Lacs, ₹5 Lacs were borrowed by him from his friends for advancing the same to the accused and remaining ₹5,00,000/- were given by him from the money, which was lying at his house. The complainant has specifically deposed that he had borrowed an amount of ₹3 Lacs from his friend Mukesh and ₹2 Lacs from Surender. The complainant in his further cross-examination has deposed that out of ₹5 Lacs, he had borrowed ₹1 Lac from Dr. Vinod, ₹2 Lacs from Partap and ₹1 Lac from his relative and ₹1 Lac was lying at his house. The Court below held that it is not probable to believe that a person would borrow money from others just for advancing the same to another person. The testimony of the complainant itself reveals that he himself was not having sufficient financial capacity for advancing such a huge amount. It is also stated that the complainant kept on changing his stand as to the source of income. The complainant has specifically admitted in his cross-examination that neither receipt nor any agreement was entered into at the time when the money was advanced by him. It is not probable to believe that a person would advance such a huge amount to another without getting the same to be reduced into any form of writing or without getting

any receipt from the person to whom the money was so advanced by him. None of the persons from whom the complainant had borrowed money has been examined as witness neither the facts which were disclosed by the complainant in his cross-examination have been mentioned either in the complaint or in the affidavit of the complainant. The names of the persons, from whom the money was borrowed by the complainant is also missing from the list of witnesses. As per the complainant, he had advanced the money to the accused in the presence of three persons, but none of them also have been examined. There is no document on record to show that he had actually advanced ₹10 Lacs to the accused. The accused had taken specific defence that his certain cheques were lost and he has already instructed his banker for stopping the payment of the said cheques and for proving this, the accused has examined in defence Gopal Bajaj DW-2 Officer of AXIS Bank, who had specifically deposed that on the request of the accused, they have stopped the payment of the impugned cheque on 8.2.2013, whereas the complainant has alleged that the cheque had been issued on 21.8.2013.

From the evidence on record, I find that the probable defence raised by the accused has been duly supported and corroborated by DW-2 and from the cross-examination of the accused. Even no date has been mentioned on which this loan of huge amount was given to the accused.

Keeping in view the above facts and circumstances, I find that the findings given by the learned Judicial Magistrate Ist Class, Faridabad, 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**

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