

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.4031 of 2016
and
Criminal Misc. No.A-1662-MA of 2015

.....

Date of decision:16.2.2016

M/s B.K. Auto Industries

...Applicant

v.

Gurpreet Singh Panesar and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rahul Sharma, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.4031 of 2016:

This criminal miscellaneous application has been filed under Section 482 Cr.P.C. for seeking recalling of the order dated 1.2.2016 passed by this Court in Cr. Misc. No.A-1662-MA of 2015, vide which the above mentioned case has been dismissed for non-prosecution.

For the reasons mentioned in the application, the same is allowed and the order dated 1.2.2016 passed by this Court is recalled and the Criminal Misc. No.A-1662-MA of 2015 is restored to its original number.

Cr. Misc. No.A-1662-MA of 2015:

Learned counsel for the applicant prays that the arguments in

the application for leave to file appeal be heard today itself, therefore the same is taken up for hearing today itself.

This criminal miscellaneous application has been filed under Section 378(4) by M/s B.K. Auto Industries praying for special leave to appeal against the order of acquittal dated 10.2.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, under the given facts and circumstances of the case.

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

It has been stated in the application that the applicant is filing the accompanying appeal and the grounds of the same may be read as part and parcel of this application, which is likely to succeed on the grounds taken therein. It has been further stated that the order of acquittal dated 10.2.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, in complaint No.283/2 of 27.7.2012 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') filed by the applicant against the respondent, is against the law and evidence on record and based on conjectures and surmises and is liable to be set aside. It has been prayed that application may be allowed and the applicant be granted special leave to file appeal against the above order of acquittal.

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

From the record, I find that M/s B.K. Auto Industries through its proprietor Gurmeet Singh filed complaint against Gurpreet Singh

Panesar, Vikram Panesar partners and M/s E.N.B. Export through one of its partner Gurpreet Singh Panesar under Section 138 of the NI Act.

It is mainly stated in the complaint that the accused were in need of money and as such in the month of December 2011, the complainant considering his past relation with the accused advanced a friendly loan of ₹10,20,000/-. He further alleged that in discharge of legal liability, he issued a cheque No.633343 dated 29.5.2012 for ₹10,20,000/-. The cheque was presented for encashment, which was returned back with the remarks "insufficient funds". Legal notice was given to the accused. When no payment was made, the complaint was filed.

The learned Judicial Magistrate Ist Class, Ludhiana, after appreciating the evidence acquitted the accused.

From the record, I find that the accused has taken the probable defence in the statement under Section 313 Cr.P.C. that no loan was taken from the complainant and the cheque in question was never issued to discharge any liability. It is also pleaded that the complainant was legally liable to pay ₹9,00,000/- towards the purchase of brand, namely, ENB. He further pleaded that he had placed on record the Memorandum of Understanding between ENB Exports and B.K. Autos according to which B.K. Autos was liable to pay ₹9,00,000/- to ENB Exports and it was also decided between both the firms that in case any firm is having any signed cheque or documents of other firm then the same will not be misused. The accused also examined DW-1 Vikram Singh and one Expert witness Navdeep Gupta.

A perusal of the record shows that the complainant is a proprietorship firm, but no documentary evidence has been placed on the record to show the loan transaction. The loan was given by M/s B.K. Auto Industries to M/s ENB Exports by stating as a friendly loan. This is a loan transaction between two firms and it looks improbable that there is no such entry in the records of the complainant-firm nor there is any other document to show that this is a loan transaction. There is also nothing that this transaction has been shown in the income-tax returns. The complainant failed to produce any cogent evidence on record to prove the loan transaction.

On the other hand, the accused has raised probable defence regarding this Memorandum of Understanding, which is admitted at the time of arguments by the learned counsel for the applicant. Learned counsel for the applicant has also not contested this fact that in the Memorandum of Understanding it was written that in case any firm having any signed cheque or documents of other firm then the same will not be misused, was the probable defence of the accused, which is duly supported and corroborated from the record and specially from the Memorandum of Understanding Ex.D.1. The accused has also examined Navdeep Gupta, Handwriting Expert. The complainant also produced one assignment deed in which he admitted that the complainant-firm purchased one brand from the accused-firm but both were having some amount difference. As per the Memorandum of Understanding Ex.D.1 all business relation comes to an end.

The learned Judicial Magistrate Ist Class after discussing the evidence in the right perspective has acquitted the accused. The findings given by the learned Judicial Magistrate Ist Class, in no way, can be held as perverse. Nothing has been pointed out as to which material evidence has not been appreciated in right perspective or which material evidence has been misread by the Court. The presumption under Section 139 of the NI Act has been duly rebutted. The findings given by the learned Judicial Magistrate Ist Class, Ludhiana, 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. Hence, 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.

February 16, 2016.

(Inderjit Singh)
Judge

hsp