In the High Court of Punjab and Haryana at Chandigarh

......

Criminal Misc. No.34797 of 2015

and

Criminal Misc. No.A-1754 of 2015

.....

Date of decision:23.2.2016

Sunil Kumar

...Applicant

v.

Satish Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Amit Singla, Advocate for the applicant.

......

Inderjit Singh, J.

Criminal Misc. No.34797 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 69 days in filing the application for leave to appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1754-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sunil Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 8.6.2015 passed by learned Sub Divisional Judicial Magistrate, Hansi, whereby the complaint filed by the complainant/

applicant 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 is 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 has erred in law and facts while dismissing the complaint filed by the complainant/applicant. 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 Sunil Kumar-complainant filed complaint against Satish Kumar under Section 138 of the NI Act. It is mainly stated in the complaint that the complainant was partner along with accused and Mukesh Bansal and Smt. Shalu in the firm M/s RO Hill Mineral Water, Fatehabad (hereinafter referred to as `the firm'), which was running a business of manufacturing and trading (whole sale & retail) mineral water since 8.2.2012 to 10.12.2012 and the firm was dissolved on 17.2.2013. It is stated that at the time of dissolution of the firm, ₹40,000/- of the firm were due towards accused and accused took ₹40,000/- as advance from the complainant in partnership relation and assured to repay the said amount within a month. In discharge of aforesaid legally enforceable liability, the accused issued two cheques bearing Nos. 000118 and 000119 dated 15.3.2013 and 23.3.2013 respectively amounting to ₹20,000/- each. The cheques were presented for encashment, but these were returned back with the remarks “funds insufficient”. Legal notice was given. When no payment was made, the complaint was filed.

The learned Sub Divisional Judicial Magistrate, Hansi, vide judgment dated 8.6.2015 acquitted the accused. I have gone through the impugned judgment passed by the learned Sub Divisional Judicial Magistrate, Hansi, which is as per evidence and law. 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 which material evidence has not been considered. As per the case of the complainant, the firm was dissolved on 17.2.2013 and he remained a partner from 8.2.2012 to 10.12.2012 and at the time of dissolution of the firm ₹40,000/- were due towards the accused and the accused had taken ₹40,000/- as advance from the complainant and later on issued two cheques in question in discharge of said legally enforceable liability. The Court below held that a perusal of the dissolution deed dated 17.2.2013 Ex.D1 shows that it had been executed between the partners including the complainant which also bears the signatures of complainant Sunil Kumar. The accused had also placed on record affidavit of complainant Sunil Kumar as Ex.D.2, wherein he declared that he had cleared all his account with other partners and he was satisfied for all the accounts and he has no objection for any matter of the firm. The complainant has admitted his signatures on dissolution deed Ex.D.1 and affidavit Ex.D.2 in his cross-examination. The other partners also gave affidavits Ex.D.3 to Ex.D.5 to the same effect. Therefore, the dissolution deed and the affidavits show that nothing was due payable by the accused to the complainant. Further more, the complainant has given a new version that he invested ₹2,65,000/- in the firm and suffered loss of ₹55,000/- and at the time of leaving the firm, ₹2,10,000/- had come to his share and all the three partners were to make payment of ₹70,000/- each to him. He has further stated that two partners had made the payment of ₹70,000/- each in cash, whereas the accused had given ₹30,000/- in cash and issued two cheques of ₹20,000/- each for remaining payment of ₹40,000/-. The complainant had changed this version in the cross-examination totally. The Court below from the evidence on record held that presumption under Section 139 of the NI Act has been duly rebutted in this case. There was no pre-existing liability regarding which these cheques had been issued. The findings of the learned Sub Divisional Judicial Magistrate, Hansi, 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.

February 23, 2016.

(Inderjit Singh)
Judge

hsp