

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.35379 of 2015
and
Criminal Misc. No.A-1764-MA of 2015

.....

Date of decision:2.2.2016

Jagan Nath

...Applicant

v.

Sanjay Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

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

.....

Inderjit Singh, J.

Cr. Misc. No.35379 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 274 days in filing the criminal miscellaneous application for leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1764-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sanjay Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.11.2014 passed by learned Judicial Magistrate Ist Class, Samana.

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 is further stated that the learned trial Court erred in law as well as facts on file in acquitting the respondent-accused despite the fact that the accused took an amount of ₹1,90,000/- from the applicant and the cheque was returned on the ground of “funds insufficient”. It has been prayed that the application may be allowed and leave to file appeal may be granted against the judgment of acquittal dated 3.11.2014 passed by learned Judicial Magistrate Ist Class, Samana.

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

From the record, I find that complainant-Jagan Nath filed complaint against Sanjay Kumar under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the NI Act’). As per the facts of the complaint, the accused borrowed a friendly loan of ₹1,90,000/- from the complainant. In discharge of his said debt and liability towards the complainant, he issued cheque bearing No.699066 for a sum of ₹1,90,000/- dated 28.5.2011, which on presentation for encashment was returned back with the remarks “funds insufficient”. Legal notice was issued. When the payment was not made, the complaint was filed.

The accused in defence examined DW-1 Dr. Inderjit Singh, Handwriting and Fingerprint Expert, DW-2 Harjinder Singh, DW-3 Sumit Kumar, DW-4 Jagdish Kumar and DW-5 Sanjay Kumar-accused himself as witnesses.

The learned Judicial Magistrate Ist Class, Samana, vide judgment dated 3.11.2014 acquitted the accused.

After going through the record specially the judgment passed by the learned Judicial Magistrate Ist Class, Samana, I find that the findings given by the Court below are as per evidence and law. In no way, these findings can be held as perverse. Nothing has been argued as to which material evidence has been misread by the Court below and which material evidence has not been considered. Nothing has been pointed out as to why the findings given by the Court below are perverse.

A perusal of the record shows that in the complaint, nothing has been mentioned as to on which date, month and year the loan was given and at which place it was given. Nothing has been mentioned regarding the source of this amount, nor it has been mentioned as to whether the amount has been paid in cash or by way of some encashable instrument. No security document was taken from the accused at the time of advancing the loan. There are no particulars given in the complaint, nor any document has been placed on record by the complainant to prove the loan transaction. The accused has denied the borrowing of the loan. He has admitted for issuing a cheque of ₹10,000/- only which has been converted to ₹1,90,000/-. The learned Judicial Magistrate Ist Class, Samana, after going through the cheque also gave the observation that it looks that the amount has been changed from ₹10,000/- to ₹1,90,000/-. It is also in the evidence that the accused, who has signed the cheque, has not filled the body of the cheque. Further more, the accused has raised probable defence that he had purchased

motorcycle for ₹40,000/- and ₹30,000/- were paid in cash and security cheque of ₹10,000/- was taken by the complainant. It is also the case of the accused that he paid some of the amount regarding which the receipts have been duly given by the complainant and accused has also brought DW-1 Dr. Inderjit Singh, Handwriting and Fingerprint Expert, who stated that the signatures and writing on the aforesaid receipts Ex.DW.5/1 to Ex.DW.5/8 tally with the standard signatures/writing of the complainant. The Court in view of this evidence has held that the accused has raised probable defence and has led the evidence to support and corroborate the defence of the accused and the Court below in the facts and circumstances of the case held that the presumption under Section 139 of the NI Act is rebutted, therefore, acquitted the accused.

The findings given by the Court below are correct, as per evidence and law and have been given after appreciating the evidence in right perspective, 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, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

February 2, 2016.

(Inderjit Singh)
Judge

hsp