

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1698-MA of 2014

.....

Date of decision:7.1.2016

Narender Dagar

...Applicant

v.

Hema Gandhi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Randhir S. Hooda, 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 Hema Gandhi-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 24.9.2014 passed by learned Additional Chief Judicial Magistrate, Palwal.

It is 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 applicant is impugning the judgment dated 24.9.2014, whereby the respondent/accused has been acquitted from the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). It is also stated that there are sufficient grounds for granting special

leave to appeal in the present case as aforesaid judgment has rendered manifest injustice to the applicant and miscarriage of justice. It has been prayed that the application may be allowed and leave to file appeal may be granted against the judgment of acquittal dated 24.9.2014 passed by learned Additional Chief Judicial Magistrate, Palwal.

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

From the record, I find that Narender Dagar-complainant filed complaint against Hema Gandhi-accused under Section 138 of the NI Act. It is mainly stated in the application that the accused borrowed a sum of ₹2,50,000/- from the complainant on 11.1.2011. The complainant demanded his money from the accused and she issued a cheque No.050405 dated 21.3.2011 for ₹2,50,000/- in favour of the complainant. On presentation of the cheque for encashment, it was returned back with the remarks "insufficient funds". Legal notice was issued, when the amount was not returned, the complaint was filed.

The learned Additional Chief Judicial Magistrate, Palwal vide judgment dated 24.9.2014 after discussing the evidence acquitted the accused.

From the record, I find that the defence of the accused in this case was that she has already intimated the bank regarding stoppage of payment of cheque in the year 2010, whereas the cheque was stated to be issued in March 2011 and the loan is stated to be taken on 11.1.2011.

I have gone through the findings given by the Court below.

CW-1 in cross-examination had admitted that the intimation was received by the Bank regarding stoppage of payment of this cheque. It was also stated by him that the report that the cheque was returned due to insufficient funds is incorrect. When the accused had already intimated the Bank on 16.10.2010 through letter Ex.D.2 regarding stoppage of payment in respect of this cheque, then the version of the complainant regarding giving the loan in the month of January 2011 and the issuance of the cheque by the accused on 21.3.2011 looks doubtful. Otherwise also, there is no document on record to show the payment of loan etc. to the accused. There is no mention in the income-tax return regarding this loan. The version of the accused is that the complainant was the owner of the shop which was on rent with the husband of the accused and five blank signed cheques were given to the complainant when the rent was increased from ₹1,500/- to ₹2,500/-. The Court below after discussing all these facts and the evidence on record in right perspective reached to the conclusion that the presumption has been rebutted and the blank cheques were not given for discharge of any legal liability. A perusal of the reasoning shows that it is as per evidence and law. There is nothing on record to show that the findings are perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread and which material evidence has not been considered by the Court below in right perspective and as to how the findings given by the learned Additional Chief Judicial Magistrate, Palwal, are perverse. From the record, I find that the findings given by the learned Additional Chief Judicial Magistrate, Palwal, are correct, as per evidence and law and 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.

January 7, 2016.

(Inderjit Singh)
Judge

hsp