In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1822-MA of 2015

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Date of decision:4.3.2016

Neeraj Kumar son of Ved Parkash

...Applicant

v.

Neeraj Kumar son of Nirmal

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amit Singla, 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 Neeraj Kumar son of Nirmal-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 21.8.2015 passed by learned Chief Judicial Magistrate, Sirsa, 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 the learned trial Court has erred in law and facts while dismissing the complaint filed by the complainant/applicant under Section 138 of the NI Act and thereby acquitting the accused. 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-Neeraj Kumar son of Ved Parkash filed complaint against Neeraj Kumar son of Nirmal-accused/ respondent for the offence under Section 138 of the NI Act. It is stated in the complaint that the complainant has cordial relations with the accused and the accused was having visiting terms with the complainant. In the month of February 2013, the accused had borrowed an amount of ₹90,000/- from the complainant on the ground of domestic affairs. In discharge of that liability, he issued cheque No.033668 dated 25.7.2013 for ₹90,000/-, which was presented for encashment and was received back with the remarks "account closed". Legal notice was issued. When the amount was not paid, then the complaint was filed well within time.

The learned Chief Judicial Magistrate, Sirsa, after appreciating the evidence acquitted the accused. The probable version raised by the accused is that no amount was taken by him from the complainant. There were no cordial relations between the complainant and accused as the brother of the complainant, namely, Sandeep alias Sonu along with other persons had assaulted the accused and they were challaned under Sections 107/151 Cr.P.C. It has been further contended that the cheque was tampered with in order to bring the case within limitation.

First of all, in the complaint no date had been mentioned when this amount of ₹90,000/- were paid. The accused has produced DW-1 HC Ashok Kumar, who had proved the copy of DDR No.26 dated 9.1.2012 Ex.D.1, on the basis of which Rapat No.7/12.1.2012 was entered. As per the defence version, the proceedings under Sections 107/151 Cr.P.C. had been initiated between the brother of the complainant as well as the accused in the year 2012. This alleged cheque for the amount had been stated to be issued in 2013 as friendly loan. From the record, it is proved and there were no friendly relations, rather, the parties have inimical relations. Secondly, there is no document on record to show any loan transaction between the parties. Further, it is the case of the accused that the cheque was issued to one Mahesh Gambhir, who is a financier and cousin of the present complainant for ₹10,000/- and that had been misused. It is also the case of the accused that Bank of Punjab was closed in the year 2009 and the same had also been merged into HDFC Bank. There is no question of issuing the cheque in the year 2013 of this Bank of Punjab. The probable defence raised by the accused has been duly supported and corroborated by the documentary evidence as well as from the cross-examination of the complainant. I have seen the original cheque also. It *prima facie* shows that the cheque had not been filled by the accused. Rather, it bears only signatures of the accused, which means the cheque was given as blank. As the bank had already been merged with HDFC Bank and the account of the accused was already closed in the year 2009, it supports the defence version that this cheque has been given in blank to another person and has been used much later on after so many years by filling it. The findings given by the Court below, in no way, can be held as perverse or against the evidence or 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 evidence has been appreciated by the learned Chief Judicial Magistrate, Sirsa, in right perspective. The findings given by the Court below are correct as per evidence and law which do not require any interference from this Court.

Keeping in view the above facts and circumstances of this case, I do not find any ground to grant leave to file appeal. Therefore, 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

hsp