

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1765-MA of 2014

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Date of decision:5.1.2016

Mandeep Singh

...Applicant

v.

Kulwinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Suveer Sheokand, Advocate for the applicant.

Mr. Yogesh Goel, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kulwinder Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 18.9.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana.

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 manifest injustice would be caused if the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Ludhiana, is not set aside. It is also stated that the learned Judicial Magistrate Ist Class has passed the

impugned judgment of acquittal on a perverse reading of evidence and as such the same is liable to be set aside. It has been prayed that the application may be allowed and leave to file appeal may be granted against the judgment of acquittal dated 18.9.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana.

Notice of motion has been issued in this case.

Mr. Yogesh Goel, learned Advocate has put in appearance on behalf of the respondent and contested this application.

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

As per the record, Mandeep Singh-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') against Kulwinder Singh. It is stated in the complaint that the accused took friendly loan from the complainant and in order to discharge his existing liability, he issued cheque bearing No.100983 dated 1.6.2012 for ₹5 Lakhs in favour of the complainant. On presentation of the cheque, it was dishonoured with the remarks "insufficient funds". Legal notice was issued, but no payment was paid, hence complaint was filed.

The accused denied all the allegations in his statement recorded under Section 313 Cr.P.C. and pleaded false implication. He further pleaded that he at the instance of the complainant invested amount in purchase of commodities including golden, silver etc. and for that reason the complainant had obtained blank signed cheques from him. On account of

differences, the complainant had misused his blank signed security cheques.

The accused also examined himself as DW-1.

The learned Judicial Magistrate Ist Class, Ludhiana, vide impugned judgment dated 18.9.2014 after discussing the evidence and the law acquitted the accused/respondent.

First of all in the present case, no particulars of loan had been mentioned on which date, month or year the loan was given. There is no mention when the demand for return of the loan had been made. There are no documents on record to show the loan transaction. The amount of ₹5 Lakhs has not been mentioned in the income-tax return. The complainant had stated in his evidence that he has no personal property in his name. The date, amount, name, payees account has been filled by the complainant which implies that the accused had only put his signatures on the cheque. The accused had taken a specific defence that the cheque was issued blank as security. The defence of the accused is that at the instance of the complainant, he invested the amount for purchase of commodities including golden and silver etc. and for that reason the complainant had obtained blank signed cheque from him. The mobile No.9872200113 was belonging to the complainant which he used in trading commodities on telephone No. 4641234. It is also the case of the accused that on account of differences, the complainant had misused his blank signed security cheques. The complainant had not denied the fact that he used to do business while using his mobile No.9872200113. The Court below held that the complainant has not placed any record of the payment/transaction. The Court in the facts

and circumstances held that the presumption under Section 139 of the NI Act has been rebutted.

From the perusal of the impugned judgment, I find that 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 in right perspective and as to how the findings given by the learned Judicial Magistrate Ist Class, Ludhiana, are perverse. From the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Ludhiana, 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 5, 2016.

(Inderjit Singh)
Judge

hsp