In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-953-MA of 2016

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Date of decision:17.5.2016

Rajinder Singh

...Applicant

v.

Balkar Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. H.S. Minhas, 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 Balkar Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 15.3.2016 passed by learned Judicial Magistrate Ist Class, Amritsar, 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 vide its judgment dated 15.3.2016 has wrongly, illegally and erroneously acquitted the respondent/ accused. As such the applicant/complainant aggrieved by this wrong order is seeking special leave of this Hon'ble High Court to file the accompanying appeal. 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 Rajinder Singh-complainant filed complaint against Balkar Singh under Section 138 of the NI Act. It is stated in the complaint that accused Balkar Singh is known to him and he is on visiting as well as friendly terms with the complainant. The accused was in the need of money and he has been raising friendly loan from the complainant from time to time and upto January 2013 the accused raised a friendly loan worth ₹4,00,000/- from the complainant and the accused agreed to return the same. The accused in lieu of discharge of debut and liability issued a cheque bearing No.052587 dated 11.2.2013 amounting to ₹4,00,000/- in favour of the complainant. The complainant presented the said cheque through his bank but the same was dishonoured with the remarks “account closed”. The cheque was again presented and it was received with the same remarks. Legal notice was issued and when the amount was not paid, the complaint was filed well within time.

From the record specially the judgment dated 15.3.2016, learned Judicial Magistrate Ist Class, Amritsar, I find that the findings given by the learned Magistrate are as per evidence and law and do not require any interference from this Court. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below or which material evidence has not been considered by the Court. Rather, the evidence has been appreciated in the right perspective by the learned Magistrate.

A perusal of the complaint itself shows that no particulars regarding the liability have been given by the complainant. It is simply written that the accused was in need of money and he had been raising friendly loan from the complainant from time to time upto January 2013. No month, date or year has been mentioned when the amount has been given as loan. No particulars of the loan have been mentioned as to how much amount and at which place and in whose presence it was given. There is also nothing in the complaint whether any security documents were obtained at any time while granting the loan. A perusal of the record further shows that there is no document on record to show about this loan transaction. The complainant in cross-examination has stated that he had given the amount to the accused after withdrawing from the bank account and some of the amount he had given from his pocket. He stated that once he had given ₹1 Lac to the accused after withdrawing the same from the bank, but he did not remember the name of the bank. This amount was given in the month of September, 2012. Again ₹45,000/- was given after withdrawing from Punjab and Sind Bank in the month of November 2012, on June 2012 ₹65,000/- was given to the accused after withdrawing from the different bank. Thereafter he had given ₹35,000/- and ₹25,000/- after withdrawing from his different bank. When cross-examined, the accused brought the original pass book of his account pertaining to Punjab and Sind Bank, Sultanwind Road, Amritsar. He admitted that there is no entry of withdrawing of ₹45,000/-. He admitted that there is no entry of withdrawal of ₹65,000/- in the month of June 2012. The Court below after discussing the entries in the passbook has also held that these passbook entries are not there as per his statement whatever the complainant said in the cross-examination.

On the other hand, the accused had raised the defence that cheque in question in fact was given to one Harmit Kaur in lieu of committee business being run by Harmit Kaur and the accused has also examined DW-1 Shamsher Singh, ex-Councillor.

Keeping in view the above discussion, I find that the findings given by the Court below are correct as per evidence and law and do not require any interference from this Court.

Therefore, from the facts and circumstances of the present case, 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.

May 17, 2016.

(Inderjit Singh)
Judge

hsp