

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1854-MA of 2015

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Date of decision:8.11.2016

Tilak Raj

...Applicant

v.

Vir Atam

...Respondent

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(2) Criminal Misc. No.A-1869-MA of 2015

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Tilak Raj

...Applicant

v.

Vir Atam

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. B.S. Baath, Advocate for the applicant.

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Inderjit Singh, J.

This order will dispose of the above mentioned two criminal miscellaneous applications under Section 378(4) Cr.P.C. against Vir Atam-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.9.2015 passed by learned Judicial Magistrate Ist Class, Pathankot, whereby the complaints filed by the complainant/applicant for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') have been dismissed and the accused/respondent has been acquitted. These applications are being

taken together as the dispute is between the same parties and the facts are mainly same.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been further stated that the learned trial Court has acquitted the accused without appreciating the evidence led by the prosecution. It has been prayed that the applications may be allowed and in the interest of justice leave to file appeals may be granted against the judgments of acquittal.

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

From the record, I find that complainant-Tilak Raj filed complaints against Vir Atam-accused/respondent for the offence under Section 138 of the NI Act. The brief facts as stated in the complaints are that the accused was in good terms with the complainant and he approached him during the month of December 2011 at his residence and borrowed a sum of ₹2,50,000/- for business urgency agreeing to pay back the same within three/four months. Accused however, failed to make the payment within the agreed time. After persuasion, the accused agreed to repay the amount and in discharge of his liability issued cheque bearing serial numbers 604752 dated 30.7.2014 in the sum of ₹1,20,000/-, which was dishonoured due to “insufficient funds”. The complainant again approached to the accused to make remaining payment. The accused again issued cheque serial No.1267597 dated 20.8.2014 for ₹1,30,000/- which on

presentation was also returned back with the remarks “funds insufficient”. Legal notice was given. When the amount was not paid, the complaints were filed.

The complainant examined himself as CW-1, reiterated the contents of the complainant and closed the evidence.

On the other hand, the accused examined DW-1 Vir Bandhu, who mainly deposed that the the complainant is running auction committee group and he also used to take money from the complainant and has given blank signed cheque as guarantee to the complainant. In his cross-examination, he identified the signatures of the accused on cheque Ex.C.1, but deposed that body is not filled by the accused. He denied that ink and pen used for filing the body and signing the cheque is same. He further deposed that all cheques were given as guarantee in the year 2011 and that whole of the payment was paid to the complainant by the accused.

The learned Judicial Magistrate Ist Class, Pathankot, after discussing the evidence acquitted the accused.

I have gone through the judgments passed by the Court below.

At the time of arguments, learned counsel for the applicant has not pointed out as to how the findings given by the learned Judicial Magistrate Ist Class, Pathankot, are perverse or against the evidence. Nothing has been pointed out as to how the findings given by the learned Magistrate are illegal or against the 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.

A perusal of the judgments passed by the Court below shows that the findings are given as per evidence and law. The evidence has been appreciated in the right perspective. The accused has taken the defence in this case by examining DW-1, who has stated that the complainant is doing the committee business in the name of M/s Shree Krishna Investment and Finance Company and the blank cheques are taken by him as a security in these committees and he stated that the accused had given the blank signed cheques. The complainant in cross-examination earlier denied by saying that he is not proprietor of M/s Shree Krishna Investment and Finance Company but later on admitted that he was a sleeping partner of the Company. He also stated that the Company now stands closed. DW-1 has also relied upon the receipts given by the complainant. The Court after going through the cross-examination of the complainant and the evidence of DW-1 and further that there is no document of any type to prove the loan transaction held that presumption under Section 139 of the NI Act is rebutted by the accused. The Court also held that the accused has raised defence which is probable. A perusal of the findings given by the Magistrate shows that the accused has raised the probable defence which is duly supported and corroborated by DW-1 and further from the cross-examination of the complainant. Otherwise also, it looks improbable that the complainant was not knowing the date when the loan was given. Secondly, if the complainant is running a finance business, then it looks improbable that he will not maintain any account for advancing of loan of ₹2,50,000/- to the accused. It also looks improbable that the accused, who

is running business of finance, will not get any security document at the time of advancing of loan.

Therefore, from the above discussion, I find that the findings given by the learned Judicial Magistrate Ist Class, Pathankot, while acquitting the respondent-accused are correct as per evidence and law and do not require any interference from this Court and the same are upheld.

Therefore, I do not find any ground to grant leave to file appeals. Consequently, finding no merit, the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeal are dismissed.

November 8, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No