In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1862-MA of 2015

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Date of decision:4.3.2016

Raj Kumar

...Applicant

v.

Sunil Kumar

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Namit Khurana, 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 Sunil Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 6.10.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 while acquitting the accused has not appreciated the facts on record and evidence adduced by the appellant in a true and correct perspective and passed the judgment on the basis of conjectures, surmises and presumption which is liable to be set aside. 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-Raj Kumar filed complaint against Sunil Kumar-accused/respondent for the offence under Section 138 of the NI Act. It is mainly stated in the complaint that in the first week of December 2013, the accused borrowed a friendly loan of ₹1 Lac from the complainant for expanding his business with an assurance to return the same within ten days. The accused issued cheque bearing No.012294 dated 20.12.2013 for a sum of ₹1 Lac drawn on Central Bank of India, Branch Jagadhri. On presentation of the cheque for encashment, it was returned with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 6.10.2015 acquitted the accused after appreciation of evidence. The defence of the accused was recorded at the time of service of notice of accusation upon the accused. The accused in defence stated to the effect that he had never issued the cheque in question in favour of the complainant in discharge of any existing legal liability. He also stated that he had given the cheque in question duly signed by him in blank to Sarvar Ali alias Raj who runs chit fund business as security. He also stated that he does not know the complainant and has never met him in his life. He also stated that the complainant has filed the present complaint against him in collusion with Sarvar Ali by misusing the cheque in question.

During the cross-examination, the complainant stated that the accused had issued the cheque in question in his favour in discharge of his existing legal liability which arose on account of friendly relations between the parties. In cross-examination, the complainant admitted that the accused is not his relative. He further stated that he does not know where the accused is doing his job and what is his salary. The complainant also stated that he does not know how many siblings the accused has. The complainant further stated that name of the son of accused is Raj, whereas the accused had placed on record documents Ex.D.1 and Ex.D.2 to show the fact that name of his son is Divyanshu. The Court below from the cross-examination of the accused held that it appears that there were no friendly relations between the parties because of which the complainant could have advanced ₹1 Lac to the accused and that too without reducing anything into writing and without getting any document. The Court below also held that in the complaint the date of demand of loan and date of giving of loan has not been mentioned. There is no document to show this loan transaction for which the cheque was issued. Even in the cross-examination, the complainant stated that he does not know where the accused is serving. In the complaint it has been stated that the loan was given for enhancing his business, but the complainant was not know anything as to what business the accused was undertaking which was required to be enhanced. The amount of ₹1 Lac also cannot be given in cash in view of Section 269-SS of the Income-Tax Act. The complainant further stated that even this amount had not been mentioned in the Income-Tax return or no record has been maintained by him. The complainant further stated that out of ₹1 Lac he had partly withdrawn the money from his account being maintained in Punjab National Bank and remaining amount was lying with him at his home. Only ₹44,000/- were withdrawn from the bank on 5.12.2013 and ₹15,000/- on 5.12.2013. The Court below held that this withdrawal cannot be connected and proved as loan transaction in the present case. In view of the evidence on record, I find that the presumption under Section 139 of the NI Act has been duly rebutted by raising probable defence by the accused.

Therefore, from the above discussion, I find that the findings given by the Court below are correct as per evidence and law which do not require any interference from this Court. In no way, the findings can be held as perverse. 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.

Therefore, 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.

March 4, 2016.

(Inderjit Singh)
Judge

hsp