In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.38643 of 2015

and

Criminal Misc. No.A-1914-MA of 2015

.....

Date of decision:4.3.2016

Amit Kumar

...Applicant

v.

Vinod Bhatia and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kamal Narula, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.38643 of 2015:

For the reasons mentioned in the criminal miscellaneous application and keeping in view the fact that the delay has been occurred due to the period spent by availing wrong remedy by filing an appeal before the Sessions Court, the delay of 920 days in filing the criminal miscellaneous application for grant of leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1914-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Vinod Bhatia-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 4.3.2013 passed by learned Judicial Magistrate Ist Class, Abohar, 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 judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Abohar, has caused grave miscarriage of justice. 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-Amit Kumar filed complaint against Vinod Bhatia-accused/respondent for the offence under Section 138 of the NI Act. It is stated in the complaint that the accused in discharge of his legal debt towards the complainant issued cheque bearing No.000040 dated 27.8.2008 for ₹1,50,000/-, cheque No.000042 dated 20.9.2008 for ₹1,50,000/- drawn on Kotak Mahindra Bank, which on presentation for encashment were returned unpaid with the endorsement “account closed”. Legal notice was given. When the amount was not paid, then the complaint was filed well within limitation.

The complainant produced evidence. The accused in his statement recorded under Section 313 Cr.P.C. took the plea that he has no dealing with the complainant nor he knows the complainant and he did not receive any legal notice from the counsel of the complainant and in the copy of the legal notice name of his father has not been mentioned. The accused also examined DW-1 Saksham Kumar and DW-2 Ashok Kumar.

The learned Judicial Magistrate Ist Class, Abohar, after appreciating the evidence acquitted the accused. A perusal of the impugned judgment shows that the findings given by the learned Judicial Magistrate Ist Class, Abohar, are correct as per evidence and law. 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.

A perusal of the complaint itself shows that even in the complaint nothing has been mentioned regarding the existing liability to discharge for which the cheques had been issued. There are no particulars regarding the liability. No date, month or year has been mentioned. No particulars have been mentioned regarding the liability as to how much amount was payable by the accused regarding which the accused had issued the cheques. The Court below after discussing the cross-examination of complainant-Amit Kumar held that the presumption under Section 139 of the NI Act has been rebutted by raising probable defence. As per the cross-examination of complainant-Amit Kumar, he specifically admitted that he has passed 8th standard and his father is working as painter and except this, his father is having no other business and source of income and his father is earning ₹250/- per day. His father has neither inherited any ancestral property nor any property has been inherited by them from their mother side. The complainant admitted that his father is having only one house, in which they are residing. The complainant further admitted that he started making shoes and he was getting pay of ₹4,200/-, where he was working and thereafter he started his own shop. He also admitted that he cannot save any money out of his income of ₹4,200/-. He further admitted that he met the accused through his brother four and half years ago, but he does not know the business of Vinod Kumar nor he knew the status of the family of the accused and what is the income of his family. He further admitted that he lent money to the accused in cash by mortgaging his house to the extent of ₹1,50,000.- and remaining amount was given by him out of his business and the remaining amount was obtained by him on interest. The Court below held that when he was asked to produce the mortgage deed, he failed to produce the same. The complainant produced on record agreement to sell dated 1.1.2008, but this agreement was not bearing any signatures of attesting witnesses and the Court has not put reliance on the agreement. The Court further held that the complainant during cross-examination stated that he had given ₹4.5 Lacs to the accused and in lieu of the same the accused gave three cheques of ₹1,50,000/- each and out of the three cheques the date of one cheque had expired, which is not believable as the complainant in the present case is not a rich person, rather, he is merely earning means sufficient for his livelihood. From the account statements Ex.D.5 and Ex.D.6, the Court held that at that time in the account of the complainant there was no day on which the complainant was having more than ₹50,000/-.

From the record, it is clear that the complainant was not known to the accused. The complainant was earning only ₹4,200/- per month earlier and now running a shop and the complainant has no capacity to pay such a huge amount i.e. also without getting any security document. This transaction has not been supported and corroborated by any evidence. The complainant was not knowing the accused. Even he was not knowing the status of the family of the accused. So, no person will give any amount to the accused, who was not known to him without getting any security document. Otherwise also, in the complaint no particulars have been mentioned. There is no document on record to show this loan transaction.

Keeping in view 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.

In the facts and circumstances of the present 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