In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1925-MA of 2015

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Date of decision:7.11.2016

Narinder Singh

...Applicant

v.

Baldev Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kanwal Goyal, 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 Baldev Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 24.9.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 had wrongly acquitted the above said accused against law, facts and evidence on record. It has been stated that the Court below had not read the evidence on record, which has resulted into manifest injustice to the applicant. The judgment is based on surmises and conjectures. The learned trial Court instead of appreciating the evidence on record had relied upon suppositions and had come to erroneous conclusion which has resulted into erroneous findings. 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-Narinder Singh filed complaint against Baldev Singh-accused/respondent for the offence under Section 138 of the NI Act. The brief facts as stated in the complaint are that the accused had taken a friendly loan of ₹3,60,000/- from the complainant and agreed to return back the same on demand to him. Thereafter, in order to discharge his existing liability, the accused issued cheque bearing No.002631 dated 10.3.2013 for the sum of ₹3,60,000/- drawn on Central Bank of India. The complainant presented the said cheque for encashment which was returned back with the remarks “opening balance insufficient”. The complainant got issued a legal notice demanding the payment of the cheque within a period of 15 days, but the accused failed to make the payment and the complaint was filed.

The complainant appeared as CW-1 and tendered into evidence his affidavit Ex.CW.1/A and examined CW-2 HC Nirmal Chand, CW-3

Jaswinder Singh, Ahlmad and closed his evidence.

On the other hand, the accused, has taken the plea as mentioned in the judgment of the learned Judicial Magistrate Ist Class, Jalandhar, which is as under:-

> "Statement of accused under Section 313 Cr.P.C. was recorded wherein all the incriminating evidence appearing against him was put to him, which he denied and pleaded that he is innocent and has been falsely implicated in the present complaint. That he has not received any loan from the complainant. Complainant has filed three complaints against him alleging friendly loan transaction of amounts of Rs.90,000/-, Rs.1,80,000/- and Rs.3,60,000/-. In fact, he had approached the complainant for getting the margin money of Rs.70,000/- financed from M/s Hinduja Leyland Finance Limited. That the complainant got opened his bank account in the name of complainant himself, i.e., in Central Bank of India, New Jawahar Nagar Market upon his own introduction. That complainant also got issued a cheque book from said bank and obtained his signatures upon four blank cheques on the pretext of same being required by the finance company. Later on, complainant instead of getting the Auto Rickshaw financed in his name, got financed the Auto Rickshaw in the name of his son Rakesh Kumar. That he used to run that Auto Rickshaw and pay installment of Rs.5050/- to M/s Hinduja Leyland

> Finance Limited, who used to obtain his signatures as a token of depositing installment amount. But they used to issue receipt in the name of Rakesh Kumar. He made payments of Rs.600/- on daily basis to the complainant towards the repayment of interest and principal of the margin money of Rs.70,000/-. That after making payment of 5-6 installments to M/s Hinduja Leyland Finance Limited, he asked the complainant to get the vehicle registered in his name, but complainant refused to do so and took away the Auto Rickshaw from him. By misusing the blank signed cheque already lying with him, complainant has filed the present complaint as well as other complaints against him in order to pressurize him to pay installments. That no meeting of any mediator took place, nor he ever agreed to pay any amount of Rs.6,00,000/- to the complainant in the panchayat, nor he issued any of the cheques in order to make payment as per the asking of panchayat. That the complainant has filed number of similar cases against different persons alleging advancement of huge amount of loans, but his financial capacity is not of that level."

In his defence evidence, the accused examined DW-1 Surinder Sharma, Head Cashier, Central Bank of India, New Jawahar Nagar Brach, Jalandhar, who proved Ex.DW.1/A attested copy of account opening form pertaining to saving account in the name of Baldev Singh son of Hakam Rai and Ex.DW.1/B certified copy of cheque requisition slip. He also examined

DW-2 Tarun Chopra, IInd Additional Ahlmad of the Court, who deposed regarding the copies of the complaint titled as "Narinder Singh Vs. Baldev Singh" bearing case No.33541/13 and he also proved certified copies of cheque, legal notice and after summoning examination-in-chief in that case. DW-3 Jaswinder Singh, Additional Ahlmad brought the record of another complaint titled as "Narinder Singh v. Baldev Singh" bearing case No.31521/13 and proved the copy of cheque, legal notice, examination-in-chief etc. DW-4 Ashish Verma, Product Executive, Hinduja Leyland Finance Limited, Jalandhar proved the copy of loan application, loan agreement and documents attached with it and statement of account pertaining to loan account of Rakesh Kumar. He also produced some receipts regarding deposit of instalments which are Ex.DW.4/D to Ex.DW.4/K.

The learned Judicial Magistrate Ist Class, Jalandhar, after discussing all these facts acquitted the accused by holding that he has raised the probable defence and presumption under Section 139 of the NI Act has been rebutted.

A perusal of the record shows that firstly no particulars have been mentioned on which date, month or year and in whose presence the loan was given and at which place the loan was given and what was the mode of payment of loan whether in cash or cheque. There are also no particulars when this loan was demanded back by the complainant. There is no document of any type to support this loan transaction. The accused has duly proved that other complaints were also filed by the complainant regarding advancing loan of ₹90,000/-, ₹1,80,000/- and ₹3,60,000/- by producing defence witnesses. There is no mention regarding those transactions in the present complaint. DW-1 Surinder Sharma has proved that the complainant had put his signatures as introducer for Baldev Singh at the time of opening of bank account. This fact supports the defence version. The said witness further stated that Baldev Singh had taken the cheque book under his signatures from the Bank at the time of opening of account but as per the defence version this cheque book after getting was kept by the complainant. DW-4 Ashish Verma has stated that the accused has signed as guarantor for the loan transaction in the name of Rakesh Kumar. No loan was taken by the accused. These facts further support and corroborate the defence version. It is settled law that the accused is to raise the defence to rebut the presumption and that defence should be probable one. The accused is not to prove his defence beyond reasonable doubt. The presumption under Section 139 of the NI Act can be rebutted from the evidence of the complainant as well as by producing defence evidence. In the present case, the presumption has been duly rebutted by the accused by producing the defence evidence and the defence is duly supported and corroborated by DWs. A perusal of the record shows that the findings given by the learned Judicial Magistrate Ist Class, in no way, can be held as perverse or against the evidence. No illegality has been committed by the learned Judicial Magistrate Ist Class, Jalandhar, while acquitting the accused. 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, from 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. In no way, the findings can be held as perverse.

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.

November 7, 2016. **(Inderjit Singh)**
Judge

hsp

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