

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.7515 of 2014
and
Criminal Misc. No.A-340-MA of 2014

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Date of decision:29.2.2016

Pawan Kumar

...Applicant

v.

Aman Kakkar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Karan Singh, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.7515 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 810 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-340-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Aman Kakkar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 13.10.2011 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 judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, is against the evidence brought on record and hence 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-Pawan Kumar filed complaint against Aman Kakkar-accused/respondent for the offence under Section 138 of the NI Act. It is stated in the complaint that in discharge of existing liability, the accused issued a cheque for a sum of ₹40,000/- drawn on Bank of Punjab Limited, Yamuna Nagar. The cheque when presented for encashment was received back with the remarks "account closed". 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 13.10.2011 acquitted the accused after appreciation of evidence. A perusal of the judgment shows that the evidence has been appreciated in right perspective. The complainant has

failed to prove that the accused had issued cheque Ex.C.1 in discharge of his legal liability towards the complainant. Defence raised by the accused is that cheque Ex.C.1 does not belong to his account and does not bear his signatures. Rather, the same was issued by his brother and bears the signatures of his brother. The Court below held that it seems to be more probable. I have also seen the original cheque in the lower Court record. The cheque was not signed by the accused. Rather, it was signed by another person. The signatures on cheque as well as on Vakalatnama and on statement of the accused recorded under Section 313 Cr.P.C. are totally different. Even the first alphabet of the signatures on the cheque does not look like 'A'. Even in the cross-examination, Pawan Kumar-complainant has stated that the cheque in question was filled by the complainant as the cheque was brought by the accused as he stated that he does not know writing. He also stated that the accused told him at that time that whenever he will repay the amount, he may take back his cheque. But even these facts are not mentioned in the complaint that the cheque was taken as security at the time of advancement of the loan. The accused in his statement recorded under Section 313 Cr.P.C. has stated that he had not borrowed any amount from the complainant nor he had given the cheque. The cheque Ex.C.1 also does not bear his signatures. The accused also stated that the cheque Ex.C.1 does not belong to his account. The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, after appreciating the evidence in right perspective has rightly acquitted the accused. It is for the complainant to show that this cheque was issued by the accused from his account, but no

cogent evidence has been produced. Even in the complaint no particulars of date, month or year have been mentioned as to when these ₹40,000/- were borrowed by the accused from the complainant. No security document was got executed at the time of giving this amount nor any income-tax record or any other record has been produced to corroborate the version regarding giving ₹40,000/- to the accused as loan. This loan transaction is not supported and corroborated by any document. Otherwise also, in view of Section 269-SS of the Income-Tax Act, any amount transaction more than ₹20,000/- should be through the negotiable instrument.

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. 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.

February 29, 2016.

(Inderjit Singh)
Judge

hsp