

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.9765 of 2015
and
Criminal Misc. No.A-466-MA of 2015 (O&M)

.....

Date of decision:3.2.2016

Ravinder

...Applicant

v.

Maa Saraswati Motors

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vikram Bali, Advocate for the applicant.

None for the respondent.

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Inderjit Singh, J.

Cr. Misc. No.9765 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 72 days in filing the criminal miscellaneous application for leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-466-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Maa Saraswati Motors-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.10.2014 passed by learned Judicial Magistrate Ist Class, Faridabad.

It is 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 is further stated that the judgment of the learned trial Court is contrary to law and facts and is liable to be set aside for the detailed reasons as set out in the grounds of appeal. 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 dated 9.10.2014 passed by learned Judicial Magistrate Ist Class, Faridabad.

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

From the record, I find that Ravinder-complainant filed complaint against Maa Saraswati Motors. As per the facts of the complaint accused being in his close contact requested him to give an amount of ₹One Crore as accused was to meet some urgent business requirements. Upon the request of the accused, he gave an amount of ₹One Crore to the accused. The said transaction was friendly and casual one. After admitting the debt liability, the accused issued cheque No.073813 dated 28.9.2010 for ₹60 Lakhs and cheque No.097368 dated 28.9.2010 for ₹40 Lakhs drawn on Oriental Bank of Commerce. The cheques were presented for encashment, but the same were returned back with the remarks “funds insufficient” & “Account closed”. Legal notice was issued. When no amount was paid, the complaint was filed.

The learned Judicial Magistrate Ist Class Faridabad, after appreciating the evidence acquitted the accused. The accused in his

statement recorded under Section 313 Cr.P.C. stated that he has no liability in favour of the complainant relating to business partnership. He further stated that the cheques in question bear his signatures, but not filled by him. These cheques were stolen from his office by the complainant.

From the record, I find that the accused has raised probable defence that he had not borrowed any amount from the accused. Rather, these cheques were stolen from his office by the complainant. The complainant alleges that he had given friendly loan of ₹One Crore to the accused, but no date, month or year had been given in the complaint when the loan was given. No security document was taken from the accused. No document of any type was got executed at the time of lending such a huge amount. There is no record maintained by the complainant regarding lending of this amount. Further more, no income-tax return showing this loan transaction had been placed on record. No bank record or any other type of record had been placed to show from where the money has come to the complainant for giving it to the accused.

The learned Judicial Magistrate Ist Class after discussing all these facts held that the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been rebutted. The trial Court also found that the date of advancement of loan was nowhere reflected in this case. When asked, the complainant pleaded ignorance regarding the same. The Court below held that this creates a shadow of doubt over the complainant's version as it is difficult, rather, quite improbable that a person would not remember the date on

which he had advanced the loan of substantial amount such as ₹One Crore. His only statement in this regard is that the loan was given a few days prior to the receipt of cheques from the accused. The Court below held that this statement again casts a shadow of doubt as he in another portion of his cross-examination stated that loan amount was given in the presence of Kamal son of not known, Raj Kumar son of Dal Chand, Dheeraj son of not known and his father (now deceased). These persons were never named in the complaint nor any such person had been examined. The complainant also stated that he was not having any money. Rather, he borrowed the same from his father. The Court below held that even the capacity of his father to lend such a huge amount was also not shown. The sale deeds, which have been placed on record, rather, show that by all these sale deeds property was purchased and not sold. The complainant also stated that the amount of ₹One Crore was paid on two occasions within one month and each time a sum of ₹50 Lakhs in cash were given, but in the complaint this fact had not been mentioned. In cross-examination, the complainant had denied the existence of any partnership with the accused. Further in his cross-examination, he admitted that this loan was given for the purpose of partnership. The complainant has not denied the fact that he was not a partner in M/s Maa Saraswati Motors. The Court below also held that the parties were also litigating and the relations between them were not cordial. The Court also held that it would not be probable that they had dealings *inter-se* and that too without any kind of documentation or in the absence of witnesses. This version of the complainant cannot be believed.

The reasoning and findings given by the learned Judicial Magistrate Ist Class, Faridabad, are as per evidence and law. The accused had rebutted the presumption under Sections 118 and 139 of the NI Act by raising probable defence. The findings, in no way, can be held as perverse or against the evidence or law. Further more, nothing has been pointed out as to how the findings recorded by the learned Judicial Magistrate Ist Class, Faridabad, are perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered.

The findings given by the Court below are correct, as per evidence and law and have been given after appreciating the evidence in right perspective, which do not require any interference from this Court.

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

February 3, 2016.

(Inderjit Singh)
Judge

hsp