

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-468-MA of 2015

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Date of decision:8.12.2016

M/s U.P. Cloth House, Ludhiana

...Applicant

v.

Balwinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sartaj Singh, Advocate for Mr. Harshit Sethi, Advocate for the applicant.

Ms. Parminder Kaur, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Balwinder Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 15.12.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the '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 Magistrate has not appreciated the facts and evidence on record in their true and correct perspective. It has been

stated that the reasons given by the learned Magistrate do not stand the test of scrutiny and are against the weight of evidence adduced in the trial. As such, the impugned judgment is wholly unsustainable in the eyes of law and has resulted in grave miscarriage of justice. It has, therefore, been prayed that this application seeking leave to file appeal may be allowed and leave be granted to the applicant to file appeal.

Notice of motion has been issued in this case.

Ms. Parminder Kaur, learned Advocate has put in appearance on behalf of the respondent and contested this application seeking leave to file appeal.

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

From the record, I find that M/s U.P. Cloth House, Main Road, Janakpuri, Ludhiana through its proprietor Shri Pritpal Singh-complainant filed the complaint under Section 138 of the NI Act. The brief facts of the case are that the complainant is running a proprietorship firm under the name and style of M/s U.P. Cloth House. The complainant sold the blankets etc. to the accused vide their bills i.e. Bill No.6052 dated 21.9.2012 for ₹62,448/- and Bill No.6057 dated 21.9.2012 for ₹55,954/- and the total amounting to ₹1,18,402/-. It is also stated that to discharge the legal liability, the accused issued cheque No.756509 dated 15.11.2012 amounting to ₹1,18,402/-, which on presentation for encashment was returned with the remarks “account closed”. A legal notice was given. When the amount was not paid the complaint was filed.

The learned Judicial Magistrate Ist Class, Ludhiana, vide judgment dated 15.12.2014, after discussing the evidence produced by the parties, acquitted the accused.

Aggrieved from this judgment, an appeal along with this application under Section 378(4) Cr.P.C. seeking leave to file leave has been filed.

At the time of arguments, nothing has been argued as to how the findings recorded by the learned Judicial Magistrate Ist Class, Ludhiana, are perverse that is against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. The defence of the accused is that M/s S.R. Shopping Centre is not owned by him. Rather, it is owned by his brother Kulwinder Singh. It is also the defence of the accused that he has his firm S.R. Fashion. Nothing is due against him as well as against his firm, as the accused has not received any goods from the complainant since 2009. Further more, it is the case of the accused that, at that time, the cheque in dispute was issued by the accused as security cheque. The cheque in dispute was blank, which has been misused by the complainant. A perusal of the record shows that DW-1 Kulwinder Singh, who produced income-tax return, shows that Kulwinder Singh is the owner of S.R. Shopping Centre and the present petitioner has no concern with that. The income-tax returns are Ex.R.1 to Ex.R.5. Kulwinder Singh also while appearing in the Court has stated that he is the proprietor of M/s S.R. Shopping Centre and there is no cross-examination nor even a

suggestion that Kulwinder Singh is not the proprietor of S.R. Shopping Centre. So, the defence version of the accused is supported by DW-1 and also by the documents. Further during the cross-examination, the complainant has admitted that the balance-sheet of the year 2012-13 produced by him shows that no balance was against S.R. Fashion in which Balwinder Singh is the proprietor. This fact also supports the defence version. The defence raised by the accused is probable one and duly supported. As per the cross-examination of the complainant as well as the defence evidence, the presumption under Section 139 of the NI Act has been rebutted by the accused.

Therefore, from the above I find that the judgment dated 15.12.2014 passed by the Court below is correct as per evidence and law and the findings have been given by appreciating the evidence in right perspective. Therefore, 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 and the same are upheld.

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

December 8, 2016.

(Inderjit Singh)
Judge

hsp

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