

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.9996 of 2015
and
Criminal Misc. No.A-506-MA of 2015

.....

Date of decision:13.1.2016

Hans Raj Singh

...Applicant

v.

Rajender Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Yashdev Kaushik, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.9996 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 04 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-506-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rajender Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.1.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the complaint filed under Section 138 of

the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') by the complainant has been dismissed.

It is submitted in the application that the complainant/applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed on the grounds mentioned therein. It has further been stated that the applicant filed a complaint under Section 138 of the NI Act for dishonour of a cheque but the learned Court below has failed to appreciate that the respondent admitted for the issuance of cheque, but the same was returned back dishonoured with the remarks "funds insufficient". The Court below has wrongly come to the conclusion that the applicant has not been able to prove from where the amount of ₹2 Lakhs was possessed by the respondent/accused. It is stated that the judgment dated 3.1.2015 passed by learned Judicial Magistrate Ist Class, Faridabad is liable to be set aside. It has, therefore, been prayed that the application may be allowed and permission to file appeal be granted in the interest of justice.

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

From the record, I find that Hans Raj Singh-complainant has filed complaint against Rajender Kumar under Section 138 of the NI Act. It is stated in the complaint that there were friendly relations between him and the accused. The accused approached him and demanded a sum of ₹2 Lakhs from him. He advanced a sum of ₹2 Lakhs to him in the month of February 2013. At the time of taking this loan amount, the accused assured him to repay the same within a period of six months. The complainant demanded

the said amount from the accused and he issued cheque No.172711 dated 28.12.2013 for a sum of ₹2 Lakhs which on presentation was returned back with the remarks “funds insufficient”. Legal notice was issued and when the amount was not paid, then the complaint was filed.

After appreciating the evidence, the learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 3.1.2015 acquitted the accused. A perusal of the reasoning given in the judgment shows that these reasons have been given as per evidence and law. The learned Judicial Magistrate Ist Class, Faridabad, discussed the law in detail. The presumption under Section 139 of the NI Act can be rebutted by the accused by raising a probable defence. The accused has raised the defence that blank signed cheque has been given to one Bhim Sen, who being close friend of the complainant, has misused it. It is also the case of the complainant that he borrowed some of the amount from Bhim Sen, which has been returned.

A perusal of the record specially the judgment shows that the income of the complainant is stated to be approximately ₹10,000/- to ₹20,000/- per month and he is the sole earner of the family of six members having four school going children. The Court below held that a reasonable doubt exists regarding the capacity of the complainant to lend such a huge amount to the accused. The Court also held from the evidence that the accused has admitted his acquaintance with said Bhim Sen. The complainant is not only acquainted, but also a friend of said Bhim Sen. As regards the accused, the complainant has failed to tell his contact number nor the same has been saved in his mobile even. However, the complainant

[4]

is stating that he is acquainted with the accused for the last 10-11 years. The Court also held that the complainant's case is that he had received the benefit regarding his land, but no such document has been placed on record. No document has been got executed as security of the loan from the accused. There is no document on record to show that any land was given by the complainant to the accused. Otherwise also, as per Income-tax Act transaction beyond ₹20,000/- should be made by negotiable instrument. No specific date has been mentioned when the loan was given.

Keeping in view the facts and circumstances of the present case, I find that the findings cannot be held as perverse. At the time of arguments, nothing has been pointed out which evidence has been misread by the Court and which material evidence has not been considered by the Court. Nothing has been pointed out as to how the findings given by the Court below are perverse or against the evidence. The findings given by the Court below are correct, as per evidence and law and 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 in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

January 13, 2016.

(Inderjit Singh)
Judge

hsp