In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-542-MA of 2015

.....

Date of decision:16.9.2016

M/s Aggarwal Finance Co. through its GPA Prem Chand

...Applicant

v.

Sher Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Baldev Singh Dhillon, Advocate for the applicant.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed by the complainant/applicant under Section 378(4) Cr.P.C. against Sher Singh for grant of leave to appeal against the judgment dated 20.12.2014 passed by learned Sub Divisional Judicial Magistrate, Pehowa, vide which the accused has been acquitted of the charge under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act').

It has been mainly stated in the application that the learned Sub Divisional Judicial Magistrate, Pehowa, vide judgment dated 20.12.2014 has acquitted the respondent of the charge under Section 138 read with Section 142 of the NI Act. It has been stated that the learned Sub

Divisional Judicial Magistrate, Pehowa, vide his impugned judgment dated 20.12.2014 acquitted the respondent from all the charges illegally and arbitrarily without considering the whole evidence produced by the applicant/complainant. It has been mentioned that the learned trial Court did not consider all the facts as such the complainant wants to bring out all the evidence and proofs before this Court. The complainant/applicant will suffer irreparable loss and injury, if the leave to appeal is not granted to him. It has been prayed that leave to file appeal may be granted.

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

From the record, I find that M/s Aggarwal Finance Company, Ambala Road, Ismailabad, District Kurukshetra through its G.P.A. holder Prem Chand filed the complaint against Sher Singh under Section 138/142 of the NI Act. It has been stated in the complaint that in discharge of existing liability, the accused issued cheque bearing No.205172 dated 3.2.2009 of ₹1,00,000/- of Oriental Bank of Commerce, Branch Ismailabad in favour of the complainant. The complainant presented the said cheque for encashment, but the same was returned back as dishonoured with the remarks “insufficient funds”. Legal notice was issued. When the amount was not paid within the stipulated time, the complaint was filed.

On the other hand the accused examined Sunil Verma, Handwriting and Fingerprint Expert as DW-1, Bal Kishan as DW-2 and Baljinder Kaur as DW-3.

The learned Sub Divisional Judicial Magistrate, Pehowa, after discussing the evidence acquitted the accused vide judgment dated 20.12.2014.

I have gone through the record of the Court below as well as the judgment passed by the learned Sub Divisional Judicial Magistrate, Pehowa. I find that signatures on the cheque has been admitted by the accused and to rebut the presumption, the accused examined DW-1 Sunil Verma, Handwriting and Fingerprint Expert, who stated that he examined the disputed body writing from marked as Q-1 and Q-2 on cheque Ex. C-1 bearing No.205172 dated 3.2.2009 and compared the same with the standard writings marked as X-1 and X-2 on cheque Ex.C-1 bearing No.444808 dated 25.4.2009 from the decided case file titled M/s Aggarwal Finance Company Versus Saravjeet Kaur, decided by learned JMIC, Pehowa on 23.11.2013 to find out whether these are written by one and the same person or not. He is of the opinion that the disputed writing marked as Q-1 and Q-2 tally with the standard writings marked as X-1 and X-2 i.e. these have been written by one and the same person. The complainant also examined Bal Kishan as DW-2, who stated that M/s Aggarwal Finance Company used to take blank cheques as security for the amount advanced to the persons and also took six blank cheques as security from him. The complainant's GPA Prem Chand in his statement Ex.R.6 admitted that M/s Aggarwal Finance company used to advance money to the people on interest and also used to take blank cheques as security for the advanced amount. Prem Chand in his cross-examination admitted that the handwriting on the body of cheque Ex.C-1 and the handwriting of the signatures of Sher

Singh on cheque Ex.C-1 are different. DW-3 Baljinder Kaur wife of Balwant alias Mirza stated that she is acquainted with the handwriting of her husband Balwant alias Mirza and the cheque bearing No.205172 dated 3.2.2009 does not bear the handwriting of her husband Balwant alias Mirza.

The learned Sub Divisional Judicial Magistrate, Pehowa, after appreciating the evidence held that the complainant's GPA Prem Chand in his statement Ex.R.6 recorded in complaint No.267/2012 titled as "M/s Aggarwal Finance Company versus Saravjeet Kaur" admitted that M/s Aggarwal Finance Company used to advance money to the people on interest and also used to take blank cheques as security for the advanced amount. CW-1 Prem Chand in his cross-examination admitted that handwriting on the body of cheque Ex.C-1 and the handwriting of the signatures of Sher Singh on cheque Ex.C-1 are different. CW-1 also claimed that the cheque was filled by Balwant alias Mirza, who came with Sher Singh, however, DW-3 Baljinder Kaur wife of Balwant alias Mirza deposed that it was not the handwriting of her husband Balwant alias Mirza. The Court below from this evidence reached to the conclusion that the blank signed cheques were given which were filled by the complainant side. The accused Sher Singh has specifically denied taking loan of ₹1 Lac from the complainant. Rather, his defence is that he had taken ₹30,000/- from the complainant and had issued the blank cheque duly signed by him as security and had repaid the loan amount of ₹30,000/- to the complainant's firm. When cross-examined, CW-1 admitted that as and when M/s Aggarwal Finance Company advanced loan, then entry of loan amount was entered in the ledger book. CW-1 had not produced the ledger book despite availing opportunity to produce the same before the Court. CW-1 Prem Chand had not denied the suggestion put to him that the accused Sher Singh took advance of ₹30,000/- from them and the said amount of ₹30,000/- had been returned with interest in instalments by Sher Singh and he merely stated that he did not remember that the accused took advance of ₹30,000/- from them and returned the same with interest in instalments. The statement of the complainant supports and corroborates the defence version raised by the accused. Further more, there is not even a single document on record to prove the loan transaction. The complainant M/s Aggarwal Finance Company is a financier and giving the loan to so many persons and also maintaining the record as per CW-1 GPA holder of the complainant, but despite availing opportunity for producing the said ledger book, he has not produced the ledger book on the next date. So adverse inference is to be taken against the complainant that there is no such entry in the record.

From the above discussion, I find that the findings given by the learned Sub Divisional Judicial Magistrate, Pehowa, are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to what illegality has been committed by the Court below. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to what material evidence has not been considered by the Court below. The judgment passed by the learned Sub Divisional Judicial Magistrate, Pehowa, does not require any interference from this Court.

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

September 16, 2016. **(Inderjit Singh)**
Judge

hsp

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