In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10561 of 2015
and
Criminal Misc. No.A-559-MA of 2015

.....

Date of decision:4.4.2016

Som Nath Singla

...Applicant

v.

Kanwal Preet Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ishan Gupta, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.10561 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 70 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-559-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kanwal Preet Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 11.11.2014 passed by learned Sub Divisional Judicial Magistrate, Moonak.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 11.11.2014 passed by learned Sub Divisional Judicial Magistrate, Moonak, which is likely to succeed on the grounds mentioned therein. It has been stated that learned Sub Divisional Judicial Magistrate, Moonak, has not appreciated the facts and evidence on record in their true and correct perspective. It has been stated that the learned trial Court in passing the order of acquittal does not stand the test of scrutiny and is against the weight of evidence adduced in the trial, as such, the impugned order is wholly unsustainable in the eyes of law and has resulted in grave miscarriage of justice. Therefore, it has been prayed that the leave to file appeal be granted.

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

From the record, I find that Som Nath Singla-complainant filed complaint against Kanwal Preet Singh under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act'). As per the brief facts of the complaint, the accused-Kanwal Preet Singh, Dharampal, Bharat Lal and the complainant got registered a Company under the name and style of M/s Shikhar Network Marketing Private Limited (hereinafter referred to as `the Company') and all the persons became the Directors in the said Company with their respective shares and all of them ran the said Company upto 24.1.2010. A settlement was effected between all the four Directors of the Company regarding which an agreement dated 25.1.2010 was executed by all the four Directors, which was scribed by Chartered

Accountant of the Company, namely, Pawan Kumar Sharma of Bathinda to the effect that the father of accused, namely, Hardyal Singh was added as additional Director in the said Company and the resolution to that effect was also recorded in the minutes book of the Company. It was agreed that he would take over all the assets and liabilities of the Company and his client and other Directors, namely, Dharampal and Bharat Lal would resign from the Directorship of the Company. In this manner, the accused owned all the assets and liabilities. The agreement was duly executed by all the four Directors of the Company and the said agreement was attested by Hardyal Singh. Thereafter, the said agreement was produced before Rajiv Kumar of Bathinda, who duly entered the same in his register vide entry No.724. It is claimed that since then the complainant has no concern, whatsoever with the said Company and has nothing to do with the affairs, assets and liabilities. It is also stated that at the time of execution of agreement dated 25.1.2010, the accused issued two post-dated cheques from his account maintained by him in favour of the complainant i.e. cheque No.820726 dated 31.3.2010 amounting to ₹5 Lacs and cheque No.820728 dated 31.12.2010 amounting to ₹3 Lacs as the investment and cost of the share of the complainant in the Company as per their respective shares, which were handed over to the complainant. When the cheques were presented before the Bank, these were returned with the remarks "insufficient funds". When the amount was not paid, then the complaint was filed.

The complainant after examining the witnesses closed the evidence. The accused pleaded that the Company stands as it is till now and the shares of the Company stand upon all the Directors/partners till now and he has no liability against the complainant. In defence the accused examined DW-1 Varinder Kumar, UDC, DW-2 Simarpal Singh, Clerk and DW-3 Raj Kumar, Clerk.

The learned Sub Divisional Judicial Magistrate, Moonak, after discussing the evidence in the right perspective acquitted the accused/ respondent. The learned Sub Divisional Judicial Magistrate, Moonak, in his impugned judgment dated 11.11.2014 held that the specific stand of the accused is that there was no legal liability with regard to the issuance of the cheques and in the agreement vide which the post-dated cheques were given, it was already settled between the parties as to what consequences had to follow in case the dishonour of the cheques took place. CW-2 in his cross-examination has admitted that the shares of the Company were still standing on the name of the complainant. CW-2 has admitted that agreement Ex.P.10 was executed amongst the Directors of the Company. CW-2 has admitted that the cheques in question were given by Kanwal Preet Singh to the remaining Directors as per the agreement. CW-2 has shown his ignorance with regard to the clause Number 3 of the agreement. CW-2 has also admitted the receipt of the notice, which was sent by Kanwal Preet Singh through his counsel. He also admitted his signatures on the agreement. The Court below held that from the testimony of CW-2, it is clear that the cheques in question were given by the accused to the complainant at the time of execution of agreement Ex.P.10. The Court below further held that the cheques were given by the accused at the time of execution of the agreement vide which the complainant-Som Nath Singla and Dharampal and Bharat Lal agreed to retire as the Directors of the Company and Hardyal Singh, father of the accused, was introduced as the Director of the Company. The Court below further held that on the perusal of the terms of the agreement Ex.P.10, it is clear that the cheques were not given by the accused in lieu of the retirement of the Directors, but were given in lieu of the transfer of the shares of the retiring Directors. As per the terms of the agreement, which have been admitted by the complainant, 1/3rd share holdings of first party had to be transferred by the first party (Dharampal, Som Nath and Bharat Lal) to the persons as the second party (Kanwal Preet Singh) desired on the clearing of the first cheque and 1/3rd share holdings had to be transferred on the clearing of the second cheque and the last 1/3rd share holdings had to be transferred on the clearing of the last cheque. The Court further discussed the agreement and held that as per Clause 4 of the agreement, the second party has to transfer all his share holdings along with all its associates share holdings to the first party if the second party's cheques dishonoured and in that case the second party had to resign from the post of Directorship and was to agree upon the reappointment of the first party as Directors. The Court below further held that from the agreement, it is clear that the cheques in question were not given in discharge of some legally enforceable debt or liability, rather the same were given for the purpose of the transfer of the share holdings on a future date. DW-1 Varinder Kumar, UDC proved that Dharampal, Som Nath and Bharat Lal are still the Directors of the Company along with Kanwal

Preet Singh. He deposed that as per form No.1, Director Bharat Lal was having shares 2300, Som Nath was having 2200 shares, Dharampal was having 2300 shares and Kanwal Preet Singh was having 3100 shares. He further testified that the status of the Company was active. The Court further held that the terms of agreement Ex.P.10 were never acted upon by the parties, which is clear from the fact that the shares have not been transferred and Dhrampal, Som Nath and Bharat Lal are still the Directors of the Company. Thus, the terms of agreement were never acted upon. Rather, on the perusal of legal notice, it is clear that the accused offered to transfer his share holdings in the favour of Dharampal, Som Nath and Bharat Lal as per the Clause 4 of the agreement.

These findings given by the learned Sub Divisional Judicial Magistrate, Moonak, are correct as per evidence and law and, in no way, these findings can be held as perverse or against the evidence or law. 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 by the Court below. From the record, it is clear that the cheques were issued for transfer of the share of the complainant and other persons on future date. As per agreement Ex.P.10, the complainant and other persons are still Directors and the owners of the shares and the shares have not been transferred to the accused. Therefore, the cheques were not issued by the accused for discharge of any legal liability.

Therefore, from the above discussion, the findings given by the learned trial Court are correct as per evidence and law and do not require any interference from this Court.

Therefore, from the above, 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.

April 4, 2016.

(Inderjit Singh)
Judge

hsp