

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-707-MA of 2015

.....

Date of decision:19.9.2016

Shri Kishan

...Applicant

v.

Het Ram Saini

...Respondent

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**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Johan Kumar, 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 Het Ram Saini for grant of leave to appeal against the judgment dated 11.2.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

It has been mainly stated in the application that the applicant is filing the accompanying appeal in this Court which is likely to succeed on the grounds mentioned therein. It has been stated that the trial Court has totally ignored the fact while acquitting the respondent that all the ingredients of Section 138 of the NI Act have been complied with by the complainant and the respondent has admitted his signatures on the cheque in question. The learned trial Court has failed to appreciate the evidence of

the complainant. It has been stated that the impugned order passed by the learned trial Court on the face of it is perverse, incorrect and contrary to the weightage of oral and documentary evidence. 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, specially, the judgment dated 11.2.2015 passed by the learned Judicial Magistrate Ist Class, Faridabad, I find that Shri Kishan-complainant filed complaint under Section 138 of the NI Act against Het Ram Saini. It was mainly stated in the complaint that the accused was known to the complainant and he induced the complainant to purchase a plot at Revenue Estate Unchagaon. Accused assured the complainant that if the amount is invested in this land, there will be profit and the land is free from all sorts of encumbrances, charges, mortgage etc. and there was no dispute in respect of the land. Accused further assured the complainant that possession of the land would be given immediately and thereafter the deal was struck between the parties and the accused received the payment towards sale. Accused got sale deed dated 25.2.1991 executed through one B.N. Singh. But the possession of the plot was never given to the complainant in spite of the repeated requests, as there was no land on the spot and sale deed was executed in order to cheat and defraud the complainant. Thereafter, an application was moved before the Police and because of the intervention of the respectable persons, the matter was compromised and the accused in compromise dated 15.11.2009, after

acknowledging the liability towards the complainant had given cheque amounting to ₹4,50,000/- bearing No.000008 dated 15.2.2009. When the cheque was presented for encashment, the Bank returned the same with the remarks “insufficient funds”. Legal notice was issued. When the amount was not paid, the complaint was filed within time.

The learned Judicial Magistrate Ist Class, Faridabad, after appreciating the evidence acquitted the accused. In defence, the accused examined Mohar Singh as DW-1, Prem Chand as DW-2 and thereafter, defence was closed by the Court order. The accused denied the evidence appearing against him and pleaded his false implication and claimed innocence.

The accused admitted the issuance of cheque, but he contended that it was got issued under the Police pressure and the compromise document was got written in the Police Station. A perusal of the record shows that the sale deed had been executed on 25.2.1991 by one Pushpa through her GPA B.N. Singh. The present accused is neither the seller nor the witness of the sale deed. The liability as per the complainant is that the possession of the land has not been delivered. If the possession of the land had not been delivered after the execution of the sale deed, it looks improbable that the complainant kept silent for 20 years and then filed an application in the Police Station in the year 2009. Secondly, the sale deed was executed by Pushpa and if the possession was not delivered, then the liability arose, if at all, against Pushpa, who had received the sale consideration. The present accused is, in no way, under the debt or liability

towards the complainant. Presumption under Section 139 of the NI Act arose when the cheque was issued by the accused, but the accused in the present case by raising probable defence, which is duly supported and corroborated by evidence of the complainant as well as defence witnesses, has rebutted the presumption. The Court further held that as per the sale deed Ex.C.6, it is written that the possession had been handed over by the seller to the buyer and seller will have no right whatsoever after the execution of the sale deed. In the sale deed, there is no such condition that the present accused would be liable for any act etc. There is no mention regarding the accused in the sale deed neither as a party nor as a witness to the sale deed. Ex.C.8 is a compromise arrived at between the parties. In this compromise, it has been stated that the possession over the disputed plot is of the accused, but no such evidence has been produced by the complainant which can show that the possession over the plot is of the accused. Further more, even if it is taken that the accused is in illegal possession of the plot, then as to how the liability arose and who determined the liability. There is no decision by any Arbitrator or by any Court fixing the mesne profit qua the illegal possession etc. CW-2 had specifically deposed that compromise Ex.C.8 was written at Police Station, which also corroborates the version of the accused that he issued the cheque under compulsion.

Keeping in view the above facts and circumstances, I find that the findings recorded by the learned Judicial Magistrate Ist Class, Faridabad, are correct as per evidence and law. In no way, these 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. There is nothing on the record to show that as to how these findings are illegal.

From the above, I find that the findings given by the learned Judicial Magistrate Ist Class, Faridabad, acquitting the accused are correct as per evidence and law and do not require 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 19, 2016.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |