In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.18121 of 2014
and
Criminal Misc. No.A-889-MA of 2014

.....

Date of decision:12.4.2016

Prem Chand

...Applicant

v.

Ashwani Sayal

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shilak Ram Hooda, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.18121 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 10 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-889-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ashwani Sayal-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 15.3.2014 passed by learned Additional Chief Judicial Magistrate, Panchkula.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 15.3.2014 passed by learned Additional Chief Judicial Magistrate, Panchkula, which is likely to succeed on the grounds mentioned therein. The judgment of acquittal of the accused/respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') has caused 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 Prem Chand-complainant filed complaint against Ashwani Sayal under Section 138 of the NI Act. As per the brief facts of the complaint, the accused had an old acquaintance with the complainant and due to that intimacy, he had demanded a loan of ₹35 Lacs from the complainant as he wanted to purchase a hotel in Shimla (HP) and accordingly, the complainant paid the aforesaid loan of ₹35 Lacs to the accused on 26.12.1997, as he had received the compensation amount on account of acquisition of his land by the Government of Haryana. The accused had promised to repay the aforesaid amount to the complainant within a period of two years. However, despite the repeated requests, the accused postponed the payment. On 10.6.2002, the accused had issued three cheques i.e. one bearing No.AS-120501-255 for ₹50,000/- and another cheque bearing No.AH-12050141 for ₹15 Lacs and another cheque bearing No.354067 for ₹20 Lacs in favour of the complainant in discharge of his aforesaid liability. The complainant presented the aforesaid cheques for collection. The cheque No.354067 for ₹20 Lacs was dishonoured due to "insufficient funds" and the remaining cheques were returned with the remarks that account had not been in existence. Legal notices were issued and when the payment was not made, then the complaint was filed. The complainant himself appeared in evidence as CW-1 and closed the evidence.

On the other hand, the accused denied the correctness of the evidence and pleaded innocence and false implication.

The learned Additional Chief Judicial Magistrate, Panchkula, vide impugned judgment dated 15.3.2014 after appreciating the evidence acquitted the accused.

I have gone through the reasoning given by the learned Additional Chief Judicial Magistrate, Panchkula. These are correct as per evidence and law. In no way, these findings can be held as perverse or against the evidence and law. No illegality has been committed by the learned lower Court. 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. Rather, the learned trial Court appreciated the evidence in right perspective. As per the complainant, loan of ₹35 Lacs, which is a huge amount, had been given to the accused in cash. There is no document on the record to show that any writing like pronote, agreement or receipt etc. had been scribed at that time. There is no document on the record to show this loan transaction. There is also nothing on the record to show the source of this amount. No document had been produced on the record to show that this amount was withdrawn from the Bank. No account book of any type had been produced to show this transaction. This amount had not been mentioned in the income-tax return nor it has been produced on the record. Even as per Section 269-SS of the Income-tax Act amount of more than ₹20,000/- can only be given through negotiable instrument i.e. cheque etc. In the complaint, the complainant states that this amount had been received by him on account of acquisition of his land by the Government. There is no document on record to show the acquisition of the land by the Government. In the evidence, the complainant produced photostat copies of two sale deeds Mark-A and Mark-B. Firstly, these sale deeds have not been proved as per law. Secondly, it is not the case of the complainant that the sale consideration of these sale deeds was lying with him and he had given the same to the accused. Further more, the Court below had considered this fact that even if it is taken into consideration, then the sale consideration will come to the amount of ₹26 Lacs. Even then, the complainant had not produced any document regarding the remaining amount of ₹9 Lacs. The accused had taken the probable defence that the complainant was managing his property at Shimla and he had stolen these cheques and has misused them. Though, this fact had not been proved beyond a reasonable doubt as the accused has not appeared in the witness box. This probable version is supported and corroborated from the evidence of the complainant himself but he is not producing any document to show this loan transaction etc. Further more, out of these three cheques, two cheques have been signed by the accused as authorized signatory of Sayal Resorts Private Limited. This is also clear from the original cheques that these had been issued as authorized signatory of Sayal Resorts Private Limited, but there is no case of the complainant that this amount was given to Sayal Resorts Private Limited nor Sayal Resorts Private Limited is a party in this case, then why he accepted the cheques from Sayal Resorts Private Limited. Even there is no allegation that Sayal Resorts Private Limited stood guarantors etc. Even otherwise, there is nothing on the record to show that why the complainant had given such a huge amount to the accused without getting any security documents etc. There is nothing on record to show as to how the accused was having old acquaintance with the complainant and gave such a huge amount to him.

In view of the evidence discussed by the learned trial Court, I find that the presumption under Section 139 of the NI Act has been duly rebutted by the accused. 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 12, 2016.

(Inderjit Singh)
Judge

hsp