

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.16612 of 2015
and
Criminal Misc. No.A-848-MA of 2015

.....

Date of decision:28.11.2016

Uma Devi

...Applicant

v.

Smt. Vijay Luxmi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sushil Bhardwaj, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.16612 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 478 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-848-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Vijay Luxmi-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 12.11.2013 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'the NI Act') has been

dismissed and the accused/respondent has been acquitted.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been further stated that the learned Magistrate committed a grave error of law while acquitting the respondent-accused, holding that the appellant-complainant had failed to prove the case beyond the shadow of reasonable doubt. It has, therefore, been prayed that this application seeking leave to file appeal may be allowed and leave be granted to the applicant to file appeal.

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

From the record, I find that Uma Devi-complainant filed a complaint against Vijay Luxmi-accused/respondent (mother-in-law of the complainant) under Section 138 of the NI Act. The brief facts as noted down in the judgment dated 12.11.2013 passed by learned Judicial Magistrate Ist Class, Karnal, are as under:-

“Brief facts of the present complaint are that on 29.6.2009, complainant married accused's son, namely, Kamal. On 29.7.2009, complainant took admission in MBA after depositing Rs.70,000/- in Bhagwan Mahabir Institute of Engineering & Technology, Sonapat. In addition to this, an amount of Rs.70,000/- was also given by her father to the accused & her family members as fee of MBA course. The

complainant was to deposit her remaining fee, therefore, she demanded the amount of Rs.70,000/- from the accused which was given to her by her father. Initially, the accused & her family members kept on postponing the matter on one pretext or the other and finally she issued a cheque No.96168 dated 12.1.2010 of Rs.70,000/- drawn at Indian Bank Panipat, in favour of the complainant. The complainant presented the said cheque twice for encashment with her bankers, but the same was returned unpaid with remarks “insufficient funds” vide memos dated 19.1.2010 & 10.6.2010 respectively. Thereafter, statutory legal notice dated 27.7.2010 was duly served upon the accused through registered post whereby she was called upon to make the payment of the cheque but the accused has failed to make payment of the cheque within the stipulated time of 15 days and hence the complainant filed the present complaint.”

After appreciating the evidence in right perspective, the learned Judicial Magistrate Ist Class, Karnal, acquitted the accused vide judgment dated 12.11.2013. Aggrieved from the judgment, the present appeal along with application under Section 378(4) Cr.P.C. seeking leave to file appeal has been filed.

From the record, I find that as per the allegations of the complainant, who is daughter-in-law of the accused, ₹70,000/- were given by her father for payment of the fees and the complainant took admission for doing MBA after depositing ₹70,000/-. There is no dispute regarding

this fact. The complainant further states that another sum of ₹70,000/- was also given by her father to the accused and her family members as fee of MBA course and the complainant was to deposit that fees and the accused issued cheque dated 12.1.2010 of ₹70,000/- which cheque was presented and was returned with the remarks “insufficient funds”. During the cross-examination, the complainant admitted that the cheque was given to father-in-law and not to mother-in-law. During cross-examination, the complainant admitted that amount of ₹70,000/- was paid to her father-in-law and not to mother-in-law. If that is the case, then there was no liability of the present accused/ respondent mother-in-law to pay any amount to the complainant. She was not under obligation to pay ₹70,000/-. It is not the case of the complainant that mother-in-law had issued the cheque to discharge the liability of her husband i.e. father-in-law of the complainant. Therefore, one of the necessary ingredients is missing that the accused was under obligation to pay the amount and there was debt existing and the cheque was issued to discharge the liability. Further, I find that it is in the evidence that the cheque was issued on 12.1.2010 and the fees of ₹70,000/- was paid in the month of February/March 2010. There is no evidence that this fees was paid by father of the complainant again. Rather, the complainant has stated that after her marriage, her necessities were fulfilled by her in-law's family. In that way also, the liability has already been discharged by paying the fees in February/March 2010 before the cause of action arose to the complainant. The cheque was presented in the bank on 10.6.2010 and legal notice was issued on 27.7.2010 and the reply was given to the legal notice.

Keeping in view the above facts, I find that the learned Magistrate after appreciating the evidence in right perspective has rightly acquitted the accused. The findings cannot be held as perverse or against the evidence. In no way, it can be held that any 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 which material evidence has not been considered by the Court below. There is also nothing on the record to show as to what illegality has been committed by the Court below.

Therefore, from the above I find that the judgment dated 12.11.2013 passed by the Court below is correct as per evidence and law and the findings have been given by appreciating the evidence in right perspective which do not require any interference from this Court and the same are upheld.

Therefore, I do not find any ground to grant leave to file appeal. Consequently, 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.

November 28, 2016.

(Inderjit Singh)
Judge

hsp

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