In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.18414 of 2014
and
Criminal Misc. No.A-911-MA of 2014

.....

Date of decision:28.9.2016

Mewa Singh

...Applicant

v.

Rajesh alias Premveer

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Goyat, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.18414 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 42 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-911-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rajesh alias Premveer-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 12.2.2014 passed by learned Judicial Magistrate Ist Class, Hisar, dismissing the complaint filed under Section 138 of the

Negotiable Instruments Act, 1881 (hereinafter referred to as `NI Act') and acquitting the accused of the charges framed against him.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 12.2.2014 passed by learned Judicial Magistrate Ist Class, Hisar, which is likely to succeed on the grounds mentioned therein. It has been further stated that vide the impugned judgment, the learned JMIC, Hisar, has wrongly and illegally acquitted the respondent/accused from the charge under Section 138 of the NI Act. 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 Mewa Singh-complainant filed complaint against Rajesh alias Premveer under Section 138 of the NI Act. As per the brief facts of the complaint, the accused had borrowed an amount of ₹6 Lacs from the complainant on 2.5.2010 for his personal necessity and the complainant had given this amount to the accused without any thinking because the accused was the resident of village of the complainant Bado Ragdan. The accused had assured that he would pay this amount in the month of May 2011. The accused in order to discharge his monetary liability, had issued cheque bearing No.068312 dated 27.5.2011 for an amount of ₹6 Lacs of UTI Bank Limited, which on presentation for encashment was dishonoured with the remarks "funds insufficient". Legal notice was given, but when the amount was not paid within the stipulated time, the complaint was filed.

After the evidence of the complainant, the accused was examined under Section 313 Cr.P.C. He stated that the complaint is false one and the witnesses have deposed falsely. He also tendered in the evidence documents Ex.D.1 to D.12. The learned Judicial Magistrate Ist Class, Hisar, vide judgment dated 12.2.2014 after appreciating the evidence acquitted the accused/respondent. Aggrieved from the impugned judgment, the appeal along with application seeking leave to file appeal has been filed.

A perusal of the judgment passed by the learned Judicial Magistrate Ist Class, Hisar, shows that the findings have been given by the Court below while appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence or against the 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.

First of all, the amount of ₹6 Lacs has been given by the complainant to the accused without any thinking because the accused belongs to his village. There is no averment that this amount had been given on interest. PW-1 complainant in his cross-examination deposed that the amount was given to the accused on interest @ 1½% and it was given for a period of one year. In cross-examination, the complainant further deposed that his son and daughter-in-law had advanced money to the father of the accused on interest and for that purpose the mortgage deed was executed. He also stated that he had retired as a Lecturer of History. The learned Judicial Magistrate Ist Class, Hisar, held that the complainant is a well educated person. When, at the time of advancement of loan to the father of the accused, the son and daughter-in-law of the complainant had got executed the mortgage deed in their favour, it is not probable that the complainant would advance huge amount of ₹6 Lacs to the accused without any writing. In his cross-examination, a question was asked to PW-1 Mewa Singh-complainant that whether on 20.12.2012, he had given a statement/ deposition in the Court of Shri Hemant Yadav that he never went to the house of Rajesh and he does not have any relation with him. To this question, PW-1 has answered that it is right that he had given that statement/ deposition, however he has volunteered that Rajesh used to come to their house and he had not gone to the house of Rajesh. The Court below held that as per the complainant, the accused was known to him and that is why he had given ₹6 Lacs to him. But it is admitted by the accused that he did not have any relation with Mewa Singh while making the statement on 27.11.2013 before other Presiding Officer, so the Court held that the case of the complainant is falsified. The Court further held that on 12.5.2011, the complaint's son Vinod had got registered FIR No.358 dated 12.5.2011 for the offences under Sections 285 and 506 IPC and Sections 25 and 27 of the Arms Act at Police Station Sadar, Hisar against Rajesh and this cheque is stated to have been given on 27.5.2011 i.e. after 15 days of the registration of the FIR. The Court held that it looks improbable that the accused would give second weapon against him to the complainant. Further more, a perusal of the record of the Court below shows that mother of the accused had also filed a civil suit regarding the property in dispute. The case of the accused before the Court below is that the cheques have been given. It looks improbable that he will not maintain the record regarding the loan transaction. Further from the record, I find that a suggestion was put to the complainant and he had shown the ignorance by stating that the blank signed cheques of the accused were lying since 2007 with his son and daughter-in-law. This ignorance to the suggestion shows that the complainant is not denying the suggestion that these cheques were given by the accused as surety at the time of loan taken from the son and daughter-in-law of the complainant. This fact has been further corroborated as one complaint was filed by brother-in-law of the complainant, namely, Bhupinder Singh in which cheque No.068311 had been mentioned, whereas in the present case the cheque No. is 068312. From the cross-examination of the complainant, it becomes doubtful that the complainant had given loan of ₹6 Lacs without executing any security document to the accused and further more, when the litigation is already pending between the parties including the criminal case that the accused would give a cheque for return of the loan regarding which no document has been executed.

Therefore, in view of the cross-examination of the complainant itself, the presumption of Section 139 of the NI Act has been rebutted. The findings given by the learned Court below 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.

September 28, 2016. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No