

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.19471 of 2015
and
Criminal Misc. No.A-972-MA of 2015

.....

Date of decision:22.9.2016

Himender Kumar Bhardwaj

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Raj Kumar Narang, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.19471 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 18 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-972-MA of 2015:

This criminal miscellaneous application has been filed by the complainant/applicant under Section 378(4) Cr.P.C. against State of Haryana and others for grant of leave to appeal against the judgment dated 26.2.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the complaint filed by the applicant-complainant against respondents No.2 to 5/accused has been dismissed and the accused have been acquitted of the charges framed against them.

It has been mainly stated in the application that the accompanying appeal is being preferred by the appellant against the judgment dated 26.2.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, which is likely to succeed on the basis of grounds taken therein. It has been stated that the learned trial Court has failed to appreciate that prima facie, as well as evidence brought on the Court file have undoubtedly proved the offence committed by respondents No.2 to 5. 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, I find that Himender Kumar Bhardwaj-complainant filed complaint against M/s Bigjo's Estates Limited through its Chairman Sanjeev K. Jain, Sanjeev K. Jain, Siddarth Jain and Sameer Jain-accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

The brief facts of the complaint, as mentioned in the judgment dated 26.2.2015 passed by the learned Judicial Magistrate Ist Class, Faridabad, are as under:-

“Sh. Himender Kumar Bhardwaj, the complainant, has filed the instant complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as N.I. Act) alleging that he is permanent resident of the above said address. Accused purchased the land measuring 26 Kanals 4 Marlas forming part of land bearing Khewat No.215 Min, Khatoni No.344, Rect.

No.45, Killa Nos.17/2(4-4), 22(6-13), 23(7-7), 24(8-0), Kitta-4, measuring 26 Kanals 4 Marlas, situated within the revenue estate of Village Garhi Kesri, Tehsil Gannaur, District Sonapat (Haryana), from the complainant vide a duly executed and registered sale deed registered in the office of Sub-Registrar, Gannaur on 12.1.2007 vide document No.3002. However, the possession of the above said land was never delivered by the complainant to the accused till date. It is submitted that as per the terms and conditions of the above said sale deed, in case of dishonouring of any cheque the said sale deed shall stand cancelled automatically. After admitting their liability, accused made part payment to the complainant for which they issued cheque No.060537 dt. 10.5.2007 for a sum of Rs.3,33,00,000/-, drawn on Standard chartered Bank, M-1, South Extension, Part-II, New Delhi-110049 (hereinafter referred to as the cheque in question) in favour of the complainant with assurance that same would be honoured on its presentation. The complainant presented the cheque in question for encashment with his banker i.e. ICICI Bank Limited, Sector-15, Faridabad, but the same was returned back dishonoured with remarks 'Funds Insufficient' vide bank return memo dt. 15.5.2007, which was received by the complainant on 17.5.2007. Consequently, the complainant issued a legal notice dt. 29.5.2007 through registered post A.D. to the accused, which was served upon the

accused on 30.5.2007, but accused failed to make the payment of the cheque amount to the complainant within stipulated period of 15 days of receipt of legal notice. Hence, this complaint to set the criminal law in motion has been made.”

After the close of the evidence of the complainant accused were examined under Section 313 Cr.P.C. wherein it has been stated by Sameer Jain-accused that there is no liability and the company has not issued the cheque in question. Cheque in question has been stolen and forged and it does not bear his signature. He further stated that he had received the legal notice. He pleaded false implication in this case and also opted to lead evidence in his defence.

In defence, the accused examined Sh. Lal Sahab Mishra as DW-1, Sh. Tarun Kumar Dutt as DW-2, Sh. Jai Bhagwan as DW-3, Sh. Bir Singh as DW-4, Mrs. Dimple, Additional Ahlmad as DW-6 and Sh. Sanjeev Kumar Jain as DW-6.

The learned Judicial Magistrate Ist Class, Faridabad, after appreciating the evidence, acquitted the accused. I have gone through the judgment passed by the learned Judicial Magistrate Ist Class, Faridabad. I find that the findings have been given as per evidence and law. The findings cannot 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.

From the perusal of the record specially the judgment passed by the learned Judicial Magistrate Ist Class, Faridabad, I find that the case of the complainant is that this cheque was issued for the part payment of the sale consideration qua the sale deed dated 12.1.2007, but when the complainant produced the evidence the total version has been changed and a new version came in the evidence. Affidavit Ex.CW.1/X filed by the complainant shows an altogether different story from that mentioned in the complaint. It is version of the complainant that he had acted as a middleman for procuring land for the accused company. It has been mentioned that it was a pre-settled term between the parties to the present case that the complainant will get the difference amount of the agreed price of the land and actual acquisition price and in cases where there is no difference and the deal is directly with the vendor, then in that event the complainant will get 2% - 3% commission on the total sale consideration of such land. The court below, after discussing the evidence, held that firstly total version has been changed qua the liability. Secondly, no written agreement was placed on record to show that there was such an agreement to pay 2% or 3% commission on the sale consideration. Thirdly, the Court below held that even there is no cogent evidence to show as to what was the actual rate of commission to be paid to the complainant. The complainant himself is not sure whether it was 2% or 3%. The learned Judicial Magistrate Ist Class, Faridabad, further found that there is no cogent document on record to show that as to how this cheque amount was calculated as commission of the amount nor he proved sale deeds on record

and their sale consideration etc.

On the other hand, the accused has taken his probable defence. The defence of the accused has been proved from the case of the complainant himself that there was no debt and liability and cheque was not issued for that. The presumption under Section 139 of the NI Act has been rebutted. From the evidence of the complainant himself who has given two versions and has not led any evidence to show the liability and it is a totally vague version given by the complainant qua the liability.

Therefore, from the above discussion, I find that the findings given by the Court below are as per evidence and law and do not require any 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 22, 2016.

(Inderjit Singh)
Judge

hsp

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