

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-494-MA of 2013 (O&M)

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Date of decision:13.2.2017

Yash Pal

...Applicant

v.

Ashok Kapoor

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Inderjit Singh, Advocate for the applicant.

Mr. Sunil Tandon, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ashok Kapoor-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 8.5.2013 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'the NI Act') had 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 finding recorded by the trial Court was totally perverse, illogical; on surmises and conjecture and not based on evidence and is based on erroneous understanding of the law and facts of the case. 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.

From the record, I find that Yash Pal-complainant filed a complaint against Ashok Kapoor-accused/respondent under Section 138 of the NI Act. It has been mainly stated that the accused borrowed ₹75,000/- from the complainant and in order to discharge his existing liability towards the complainant, the accused issued a cheque bearing No.22947 dated 9.6.2010 in the sum of ₹75,000/- which on presentation before the Bank for encashment returned back with the remarks “funds insufficient”. Legal notice was given and when the amount was not paid, the complaint was filed within time.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 8.5.2013 acquitted the accused. Aggrieved from the judgment, the present appeal along with application seeking leave to file appeal has been filed.

Notice of the application under Section 378(4) Cr.P.C. was issued to the respondent in this case.

Mr. Sunil Tandon, learned Advocate has put in appearance on behalf of the respondent and contested this application. Record of the trial Court was also summoned.

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

A perusal of the findings given by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, shows that the findings have been given after appreciating the evidence in right perspective. In no

way, the findings can be held as perverse or against the evidence. There is nothing on the record to show that these findings are illegal. 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.

A perusal of the record shows that no particulars of date, month or year have been mentioned in the complaint as well as in examination-in-chief of the complainant as to when the loan was given. No security document of any type had been taken from the accused by the complainant. There is nothing in the complaint as to what type of relations the complainant was having with the accused. Furthermore, there is no document on record to show this loan transaction. The defence of the accused is that he had given this cheque about 20 years back to one Vipin Mittal as a security for taking chit fund from him which has been misused by the complainant. A perusal of the record shows that on the cheque in the column of the year '19' had been mentioned. This cheque had been issued by the accused at the most in 1999 which corroborates this version that this cheque had been given much earlier. This writing of '19' in the cheque book in the year column shows that this cheque book was issued prior to year 2000 but cheque in question is stated to be of the year 2010. The cheque book issued at least 10 years earlier looks improbable to be used by the accused for issuance of the cheque. As per the complainant's version in cross-examination, the loan was advanced on 23.4.2010. Furthermore, as already discussed the loan was given for two months, but even before two

months the cheque is stated to have been issued by the accused i.e. on 9.6.2010.

Keeping in view all these facts, I find that the findings are correct as per evidence and law. Furthermore, the complainant is stated to have been doing electric repair work and earning ₹20,000/- and his expenses are ₹10,000/- etc. The Court below doubted the capacity of the complainant to lend such a huge amount even without taking the security document. Furthermore, the complainant has stated that he had withdrawn the money from the bank account but he has not produced any document.

Therefore, from above evidence, I find that the presumption under Section 139 of the NI Act has been duly rebutted by the accused.

As such, the judgment dated 8.5.2013 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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.

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.

February 13, 2017.
hsp

(Inderjit Singh)
Judge

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