

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1403-MA of 2016

.....

Date of decision:13.2.2017

Parveen Garg

...Applicant

v.

Ajay

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sharad Aggarwal, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ajay-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 26.5.2016 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') 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 trial Court has committed error on law as well as on facts. The findings of the learned trial Court are erroneous, perverse,

resulted in miscarriage of justice and are thus, totally unsustainable in the eyes of law. It has been mentioned that the learned trial Court has failed to appreciate provision of Section 138 of the NI Act while holding that the presumption of law is that the cheque was issued in discharge of a debt or other liability. It has, therefore, been prayed that this application seeking leave to file appeal 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 Parveen Garg-complainant filed a complaint against Ajay-accused/respondent under Section 138 of the NI Act. It has been mainly stated that the accused was having friendly relations with the complainant on account of visiting terms between the parties. On 3.8.2012, the accused requested the complainant to arrange ₹5 Lakhs from the complainant for a period of six months as he was in urgent need of the said sum for his personal work and the amount was advanced by the complainant to the accused. After expiry of six months, the complainant requested the accused number of times to repay the aforesaid sum, then in discharge of this legal liability, he had issued a cheque bearing No.238786 dated 14.5.2014 for a sum of ₹5 Lakhs. The cheque when presented for encashment was returned with the remarks “funds insufficient & drawer's signatures differ”. Legal notice was given and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Karnal, vide

impugned judgment dated 26.5.2016 acquitted the accused. Aggrieved from the judgment, the present appeal along with application seeking leave to file appeal has been filed.

A perusal of the findings given by the learned Judicial Magistrate Ist Class, Karnal, shows that these findings are correct as per evidence and law. The learned Court below has appreciated the evidence in right perspective. There is nothing on the record to show that the findings given by the learned Magistrate are 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.

The defence of the accused is that he never issued any cheque to the complainant and, he had not taken any loan from him as alleged. A perusal of the record shows that there is no document on record to show the loan transaction. Similarly, the complainant admitted that though he was knowing the fact that the accused had not signed the cheque and also from the memo that drawer's signatures differ, but he had not filed any application before the Court to get compared the signatures. Furthermore, the complainant has stated that he is a financier running a shop under the name & style of Shikha Finance and used to advance money to people on interest. He also admitted in his cross-examination that lending money to people is his family business and he has lent money to more than 10 or 15 persons. However, he has admitted that he had no valid licence to lend the

money to the persons. Furthermore, even if it is taken that he is a financier then he might be maintaining the record and the complainant advanced the loan without getting any security document and without maintaining any record. The version of the accused is probable one. The findings given by the learned Judicial Magistrate Ist Class are correct as per evidence and law.

Therefore, from the above I find that the judgment dated 26.5.2016 passed by the learned Judicial Magistrate Ist Class, Karnal, 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.

(Inderjit Singh)
Judge

hsp

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