

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.25836 of 2016
and
Criminal Misc. No.A-1460-MA of 2016

.....

Date of decision:3.3.2017

Ashish Kumar

...Applicant

v.

Diwan Chand

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

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Inderjit Singh, J.

Cr. Misc. No.25836 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 2 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-1460-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Diwan Chand-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.5.2016 passed by learned Judicial Magistrate Ist Class, Chandigarh, vide which the complaint filed under Section 138 of Negotiable

Instruments Act, 1881 (hereinafter referred to as '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 stated that the applicant has every hope to succeed in the appeal as he has a good *prima facie* case in his favour. 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 Ashish Kumar-complainant filed a complaint against Diwan Chand-accused/respondent under Section 138 of the NI Act. It is stated in the complaint that the complainant had friendly relation with the accused and the accused approached the complainant for financial assistance to the tune of ₹1,12,000/- for his domestic needs. The complainant paid ₹1,12,000/- to the accused in the year 2013. The accused assured the complainant to repay the loan amount within a short period. Accordingly, on demand of the complainant, accused issued cheque bearing No.903568 dated 17.7.2014, amounting to ₹1,00,000/-, cheque No.486055, dated 17.7.2014, amounting to ₹6,000/- and cheque No.486056 dated 17.7.2014, amounting to ₹6,000/- from his account. The cheques on presentation for encashment were returned back with the remarks "insufficient funds". Legal notice was issued to the accused and when the

amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Chandigarh, after appreciating the evidence acquitted the accused. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed.

I have gone through the judgment dated 9.5.2016 passed by the learned Judicial Magistrate Ist Class, Chandigarh. The findings given by the trial Court vide judgment dated 9.5.2016 are correct as per evidence and law. The reasoning given by the learned trial Court, in no way, can be held as perverse or against the evidence or law. 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 the complainant has stated that he had friendly relations with the accused and has given the loan, but the Court below after appreciating the evidence held that the accused was neither is relative nor is close friend. Therefore, it looks unnatural that the amount has been paid without any interest without getting any document executed like receipt etc. No security document has been taken by the complainant while advancing the loan of ₹1,12,000/-. Otherwise also, it also looks unnatural that on the same date the accused will issue three cheques instead of one for paying ₹1,12,000/-. Further more, the complainant while appearing as CW-1 in cross-examination has stated that he had paid a sum of ₹75,000/- as loan. In the complaint, no date and month had been mentioned when the amount was paid. There is no

document on record to show the loan transaction. The defence of the accused is that blank cheques were issued in favour of the complainant for payment of ₹20,000/- which were retained by the complainant and the said cheques were misused by the complainant in the present case.

The findings given by the learned Judicial Magistrate Ist Class, Chandigarh, shows that the presumption under Section 139 of the NI Act has been duly rebutted by the accused. Therefore, the accused has been rightly acquitted by the learned Judicial Magistrate Ist Class, Chandigarh. The judgment passed by the learned trial Court is correct as per evidence and law and does 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.

March 3, 2017.

(Inderjit Singh)
Judge

hsp

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