

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.28264 of 2016
and
Criminal Misc. No.A-1613-MA of 2016

.....

Date of decision:14.3.2017

Paramjit Singh

...Applicant

v.

Hardeep Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.S. Dhaliwal, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.28264 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 69 days in filing the appeal and criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1613-MA of 2016:

Paramjit Singh-complainant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Hardeep Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 21.3.2016 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 learned trial Court has given undue importance to minor contradiction between the statement. It has also been stated that the impugned judgment is against the law and facts on record and is liable to be set aside. The impugned judgment is contrary to the evidence on record and is based upon conjectures and surmises. The impugned judgment is otherwise erroneous in law and on the facts of record and will result in miscarriage of justice. 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 Paramjit Singh-complainant filed a complaint against Hardeep Singh-accused/respondent under Section 138 of the NI Act. As per the averments in the complaint, the complainant is an agriculturist and the accused made representation to him that he shall provide a tube-well motor connection till 25.6.2013 for the agricultural purposes and demanded a sum of ₹5,50,000/- from the complainant and assured that if he fails then he shall return the amount with interest to the complainant. The accused issued cheque bearing No.002830 dated

2.10.2013 for ₹5,49,000/-, which on presentation returned back with the remarks “funds insufficient”. Legal notice was issued to the accused and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Jalandhar, after appreciating the evidence acquitted the accused vide judgment dated 21.3.2016. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed. Lower Court record was also summoned.

After hearing learned counsel for the applicant and after going through the record, I find that first of all the defence of the accused is that he had not taken any loan from the complainant and the cheque in question was in possession of Paramjit Singh in blank position, which was given at the time of purchasing the crop and he had misused the same and concocted a false story. There is no legal liability against the complainant.

The learned Judicial Magistrate Ist Class, Jalandhar, after appreciating the evidence held that the complainant himself has not appeared in the witness box and his attorney Mandeep Singh appeared. The learned trial Court further held that power of attorney holder can depose and verify on oath on behalf of the complainant if he had witnessed the transaction or had knowledge regarding the transaction between the complainant and the accused. The Court held that from the perusal of the entire complaint, it is nowhere mentioned by the complainant as to whether power of attorney, namely, Mandeep Singh was present at the time of the alleged transaction or whether he has any knowledge about the same.

Mandeep Singh himself admitted in his cross-examination conducted on 17.11.2015 as under:-

“It is correct that I have no personal knowledge about the present case”

The Court further held that no date, month or year of the transaction had been mentioned by the complainant. Even no date, month or year had been mentioned when the accused has made representation to the complainant to get electric tube-well installed for him. CW-1 Mandeep Singh had stated that he has a writing regarding the payment made to the accused, but no such writing was produced. Even the complainant failed to produce the alleged writing regarding loan during the course of trial. CW-2 Harmesh Lal was also produced by the complainant and he also specifically deposed regarding the dates when the complainant made payment to the accused, but in cross-examination he himself admitted that no transaction between the parties took place in his presence. He also shown ignorance about specific date, month or year when the complainant made the alleged payment to the accused. Otherwise also, a perusal of the record shows that there is no document on record to show the transaction between the parties.

Keeping in view the above facts, I find that the accused has been rightly acquitted by the trial Court. The findings given by the trial Court cannot be held as perverse or against the evidence or law. There is nothing on record 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 findings have been given by the trial Court after

appreciating the evidence in right perspective.

Therefore, from the above, I find that the accused has been rightly acquitted by the learned trial Court. 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 14, 2017.

(Inderjit Singh)
Judge

hsp

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