

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.20142 of 2015
and
Criminal Misc. No.A-1023-MA of 2015

.....

Date of decision:22.5.2017

Vijay Kumar Sharma

...Applicant

v.

Pawan Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. K.B.S. Mann, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.20142 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 8 days in filing the application seeking leave to appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1023-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Pawan Kumar for grant of leave to appeal against the judgment dated 10.4.2015 passed by learned Judicial Magistrate Ist Class, Abohar, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused has been acquitted of the charge as framed against him.

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 failed to consider the overwhelming evidence on record against the accused. There was sufficient evidence on record to convict the accused-respondent, but the same was wrongly brushed aside by the learned trial Court. It has also been stated that the judgment passed by the learned trial Court is based on conjectures and surmises and the material facts and evidence was not correctly appreciated. 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 Vijay Kumar Sharma-complainant filed complaint against Pawan Kumar-accused under Section 138 of the NI Act. It is mainly stated in the complaint that accused borrowed an amount of ₹4,80,000/- from the complainant for his domestic needs and the accused in discharge of legal debt and liability issued account payee cheque bearing No.027237 dated 15.7.2013 for ₹4,80,000/-. However, on presentation of the said cheque for encashment, the same was returned back with the remarks “funds insufficient”. Thereafter, the complainant gave legal notice to the accused and when the amount was not paid, the complaint was filed within time.

The defence of the accused in the present case is that the

cheque in question was in possession of his partner Jangir Singh, whose son Harpinder Singh is close friend of the complainant and on the instance of Harpinder Singh present cheque had been misused by the complainant. Otherwise, the complainant had no concern with the accused.

The learned Judicial Magistrate Ist Class, Abohar, vide judgment dated 10.4.2015 acquitted the accused after appreciating the evidence.

I have heard the learned counsel for the applicant and have gone through the record specially the judgment passed by the learned Judicial Magistrate Ist Class, Abohar.

In no way, the findings given by the learned trial Court 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. First of all, the evidence has been appreciated by the Court below in right perspective and no illegality has been committed by the Court while acquitting the accused. The complainant himself appeared as witness in the Court. His affidavit as well as the complaint show that the complainant has not alleged any relationship or dealing with the accused. During his cross-examination, he has stated that his friend Harpinder Singh son of Jangir Singh was present at that time in his office and on behalf of Harpinder Singh he has given the loan amount of ₹4,80,000/- to the accused. Otherwise, the accused was not known to him. The Court below held that Harpinder Singh has not been examined by the complainant. The

complainant also stated in the cross-examination that he did not know exact designation/working of the accused in Civil Hospital, Abohar. He also did not know about the salary of the accused. He did not know about the father name, mother name, wife name and children of the accused nor he visited the house of the accused. He did not know about other income of the accused. In view of this cross-examination, it is clear that the complainant was having no relationship with the accused. It looks unnatural that the complainant, who was not knowing the accused, will advance such a huge amount of ₹4,80,000/- to him without getting even receipt or any security document. Furthermore, no particulars of any type have been mentioned in the complaint nor any date, month or year has been mentioned as to when the loan was given. There is no document on the record to show this loan transaction. The defence raised by the accused, i.e. cheque was misused by the son of the partner Jangir Singh, has been supported and corroborated from the statement of the complainant, who stated that he has given the money at the instance of Harpinder Singh. Further more, in the cross-examination, the complainant stated that he advanced ₹4,80,000/- to the accused on 15.7.2013 and the accused borrowed the amount for one month. The Court found that the cheque in question bears the date 15.7.2013 and has been returned unpaid on 16.7.2013 which also falsified further the claim of the complainant.

Keeping in view the findings given by the trial Court, I find that the presumption under Section 139 of the NI Act has been duly rebutted by the accused by raising probable defence which is duly supported and

corroborated from the case of the complainant itself.

Therefore, from the above, I find that the findings given by the learned Judicial Magistrate Ist Class, Abohar are correct 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 application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

May 22, 2017.

(Inderjit Singh)
Judge

hsp

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