In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1114-MA of 2015

.....

Date of decision:24.3.2017

Rama Sharma

...Applicant

v.

Narinder Kaur Mehra and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Abhinav Gupta, 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 Narinder Kaur Mehra and another for grant of leave to appeal against the impugned judgment dated 11.5.2013 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the complaint filed under Section 138 read with Section 142 Section of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the 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 there is sufficient evidence on the file to prove the case against the accused/respondent No.2 for which she was wrongly acquitted and even no evidence was led by the respondents. 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.

From the record, I find that Rama Sharma-complainant filed complaint against Narinder Kaur Mehra and Inderjit Mehra (since deceased) under Section 138 read with Section 142 of the NI Act. It is stated that the complainant and accused Nos.1 and 2 were engaged in the business of travel agents to send different persons abroad and they had taken the sum of ₹16,50,000/- on different occasions from her on the pretext of sending her and her family to U.K. on the basis of permanent residence there. But they failed to do so and thereafter, to return the money taken by them, they had issued three different cheques and out of those cheques, cheque bearing No.053366 dated 1.9.2008 for the sum of ₹8 Lakhs and cheque bearing No.060811 dated 25.8.2008 for the sum of ₹25,000/-, both drawn on Central Bank of India were issued. On presentation of these cheques for encashment, these were returned back unpaid with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

It is pertinent to mention that during the trial, Inderjit Mehra (accused No.2) died and the proceedings abated against him. Accused No.1 Narinder Kaur Mehra was appearing before the trial Court and she has been acquitted by the learned trial Court vide judgment dated 11.5.2013. Aggrieved from this judgment, the present appeal along with application seeking leave to file appeal has been filed.

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

From the record, I find that the findings given by the learned trial Court in the impugned judgment 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 complaint itself shows that the complainant had no where given any particulars of giving such a huge amount of ₹16,50,000/- to the accused. No date, month or year had been mentioned as to when this amount was paid. Nothing had been mentioned as to whether this amount had been paid in lump-sump or at various times and on various dates. No place had been given nor any particular of person in whose presence it was given nor any bank record to show when this amount was withdrawn and given to the accused have been mentioned. Further more, no security document had been taken at the time of giving such a huge amount to the accused. As per complaint, no FIR was got registered qua cheating. Further more, there is no document on record of any type to show this transaction. Neither any security document had been taken nor any receipt was taken from the accused while giving this amount. Even there is no particulars that any amount from this amount had been deposited in the account of the accused. Further more, as this case is now only qua Narinder

Kaur Mehra, it is proved by DW-2 Shweta, SWO, Central Bank of India, that the account qua which the cheque was issued was in the name of Inderjit Mehra. It was not in the name of Narinder Kaur Mehra, one of the necessary ingredients under Section 138 of the NI Act, is also missing. It is also in the evidence that Inderjit Mehra had retired as Bank employee from Central Bank of India, Jalandhar and had expired in the year 2008. Accused Narinder Kaur Mehra has stated that she is a housewife only. No evidence has been produced on record to show that the accused were ever engaged in the business of travel agency. Furthermore, even the passport has not been produced by the complainant to show that she can go to foreign country. The findings given by the trial Court are correct as per evidence and law which 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. 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 24, 2017. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No