

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1269-MA of 2015

.....

Date of decision:17.2.2017

The District Primary Co-operative Agricultural & Rural Development Bank
Ltd.

...Applicant

v.

Naveen Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

Mr. Sushil Bhardwaj, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Naveen Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 18.5.2015 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 learned trial Court has given the benefit of doubt to the respondent/accused just on the ground that the prosecution has not been able to bring home the guilt of the accused beyond shadow of reasonable doubt. It has been stated that the applicant/appellant will suffer irreparable loss and injury if the leave to file appeal is not granted in his favour. It has, therefore, been prayed that this application seeking leave to file appeal may be allowed and leave be granted to the applicant to file appeal.

Notice of the application has been issued in this case.

Mr. Sushil Bhardwaj, learned Advocate has put in appearance on behalf of the respondent and contested this application.

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

From the record, I find that The District Primary Co-operative Agricultural & Rural Development Bank Ltd. through its Branch Manager-complainant filed a complaint against Naveen Kumar-accused/respondent under Section 138 of the NI Act. It has been mainly stated in the complaint that father of the accused, namely, Madan had obtained two loan facilities from the complainant-Bank and in discharge of his existing liability towards the repayment of the said loan, the accused had issued a cheque bearing No.204328 dated 10.2.2014 in the sum of ₹2,50,000/-, which on presentation for encashment returned back with the remarks “funds insufficient & account dormant”. Legal notice was issued and when the

amount was not paid, the complaint was filed within time.

A perusal of the record shows that even in the complaint the complainant is not stating any liability against accused Naveen Kumar, who is son of Madan. There is not an iota of evidence on record to show that Naveen Kumar ever stood surety or given in writing any undertaking to repay the loan of his father. The learned counsel for the petitioner has argued at the time of arguments that the father of the present accused is alive.

Even the Branch Manager in his cross-examination has admitted that there is no legal liability on behalf of the accused. He admitted that two loans were taken by Madan amounting to ₹1,00,000/- each in the year 2007 and no loan was taken by the accused Naveen Kumar. Furthermore, the loan documents Exs.C.7 and C.9 clearly reveal that the accused is neither the guarantor nor has given any kind of written undertaking to the complainant-Bank at the time of issuing cheque in dispute in their favour. As the complainant itself not alleging any legally enforceable liability towards accused Naveen Kumar, therefore, the cheque in question issued by the accused is not for the discharge of any legally enforceable debt against the State. Even in the complaint case, Madan father of the present accused has not been made a party. Nothing has been pointed out as to which material evidence has been misread by the Court below and nothing has been pointed out as to which material evidence has not been considered by the Court below.

Therefore, from the above, I find that the judgment dated

18.5.2015 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 17, 2017.

(Inderjit Singh)
Judge

hsp

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