

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1211-MA of 2014

.....

Date of decision:24.3.2017

Dhani Ram

...Applicant

v.

Vikramjeet Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vishal Sharma Haritwal, Advocate for the applicant.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. against Vikramjeet Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 12.6.2014 passed by learned Judicial Magistrate Ist Class, Guhla, 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 vide impugned judgment has wrongly and erroneously dismissed the complaint and wrongly acquitted

the accused. It has also been stated that the applicant will suffer an irreparable loss and injury in case leave to appeal is not granted. 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 Dhani Ram-complainant filed a complaint against Vikramjeet Singh-accused/respondent under Section 138 of the NI Act. The brief facts of the case as noted down in the judgment dated 12.6.2014 passed by the learned Judicial Magistrate Ist Class, Guhla, are as under:-

“The case of the complainant is that accused had/borrowed a sum of Rs.2,50,000/- in each on 20.5.2008, from the complainant and got executed a pronote and receipt in lieu of the said borrowed amount in favour of the complainant on the same day and the accused thumb marked and signed the said pronote and receipt admitting the correctness of the same and passing of the consideration. The accused had agreed to pay back the said borrowed amount to the complainant on demand along with interest thereon @ 18% per annum. The accused failed to make the payment of said borrowed amount on demand, to the complainant, the complainant got served a notice dated 15.1.2010 upon the accused through Sh. F.C. Rana, Advocate, Guhla under Regd. cover and UPC. On the receipt of the said notice, the accused visited the complainant and issued a cheque No.982002 dated 2.3.2010 for Rs.2,60,000/- to

discharge his said existing and legally enforceable liability of making the payment of said borrowed amount as full and final payment. The complainant presented the said cheque to his banker Oriental Bank of Commerce, Cheeka who send the same to the Banker of the accused Oriental Bank of Commerce, Patran for collection but the OBC Patran for collection but the OBC Patran returned the said cheque as dishonoured for the reason "insufficient funds" vide memo dated 16.3.2010. The OBC Cheeka intimated the same to the complainant vide intimation letter dated 19.3.2010. The complainant got served a statutory notice dated 30.3.2010 upon the accused through Regd. A.D. cover and UPC through his counsel S.P. Jindal, Advocate, Guhla but despite the receipt of the said notice, the accused failed to make the payment of said cheque and has committed offence u/s 138 NIA punishable with imprisonment. Hence, the present complaint.”

The accused examined DW-1 Karnail Singh and DW-2 Dilavar Singh. The learned Judicial Magistrate Ist Class, Guhla, vide judgment dated 12.6.2014 acquitted the accused. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed. Lower Court record was also summoned.

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

Judicial Magistrate Ist Class, Guhla, are correct as per evidence and law and in no way, these findings can be held as perverse or against the evidence and 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.

From the record, I find that there is a cutting on the cheque. The cheque was stated to be issued to Mahindra and Mahindra Finance Services Ltd., the stamp has been fixed and the cheque is of payee account. This name of Mahindra and Mahindra Finance Services Ltd. has cutting on it and then Dhani Ram son of Hans Raj has been written. A perusal of the cheque also shows that the accused has signed in Punjabi as Vikramjeet Singh on the cheque and also under the cutting but the name Dhani Ram s/o Hans Raj and amount in words have been written in Hindi which clearly means that this cheque had been filled by some one else and it has been issued to Mahindra and Mahindra Financial Services Limited. There is no explanation to show this cutting and as to why the complainant had taken this cheque which was firstly in the name of Mahindra and Mahindra Financial Services Limited. There is nothing on record to explain as to why at that time the complainant had not insisted for fresh cheque. It creates a reasonable doubt that this cheque had not been issued to the complainant by the accused. The learned trial Court stated that one thing is to be taken into consideration while deciding the present case that ₹2,50,000/- as loan on behalf of the complainant has to be paid on behalf of the accused to the complainant then why the complainant accepted the cheque which has

previously been issued/payable to Mahindra and Mahindra Financial Services Limited, which is clearly visible from the cheque Ex.C.1 below the cutting. A person who is giving amount of ₹2,50,000/- to any person on loan is receiving the cheque with cutting over it is not believable. It is also held by the learned Magistrate that he can also take the fresh cheque from the accused directly in his name and he can object regarding the cutting. The learned trial Court held that any prudent person, who is receiving any cheque for the payment would not receive the cheque with such a doubt of cutting which may afterwards create controversy. DW-2 Dilavar Singh stated that he along with Vikramjeet Singh used to sell his crops at M/s Dhani Ram Hans Raj firm from the year 2005-07 and used to take the payment in cash and there was no balance remained in favour of the firm. He also deposed that in the year 2007, they have to purchase one car and upon which complainant Dhani Ram gave confidence that he will get the loan sanctioned from Mahindra and Mahindra Financial Services Ltd. and took the cheque book of accused and further get the signatures of the accused on several blank papers as well as one pronote had been taken for the purpose of security, but has not got sanctioned any loan and which was afterwards taken from somewhere else. The trial Court held that this defence version is probable. The complainant admitted in cross-examination that the accused used to sell his crops from starting and he had good relation with him and denied the fact that he has given any 'Kacchi parchi' regarding selling of any crop of paddy in the year of 2009-2010. He admitted the fact that on the cheque dated 2.3.2010, there was cutting and it is clearly visible

that below the cutting the name of Mahindra and Mahindra Finance Services Ltd. has been mentioned. The suggestion had been put that the cheque has been issued in the name of Mahindra and Mahindra Finance Services Ltd., for the purpose of loan which has been denied by the complainant.

A perusal of the findings shows that the presumption under Section 139 of the NI Act has been rebutted by the accused by raising probable defence which is duly supported and corroborated from the evidence of the complainant as well as the defence evidence. Therefore, I find that the findings have been given as per evidence and law.

Therefore, from the above discussion, 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.

As such, 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