

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1352-MA of 2015

.....

Date of decision:14.3.2017

Poonam and another

...Applicants

v.

Rajinder Kumar and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rai Singh Chauhan, Advocate for the applicants.

None for the respondents.

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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 Rajinder Kumar and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 21.3.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 applicants are 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 impugned judgment of acquittal is against the fact and law and thus the same is not sustainable and liable to be set aside. The learned Magistrate has totally misread the evidence available on record. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicants to file appeal.

From the record, I find that Prem Sagar-complainant filed a complaint against Rajinder Kumar-accused/respondent under Section 138 of the NI Act. During the pendency of the complaint, the complainant died and his LRs-Poonam, Priya Sharma, Munisha Sagar and Krishna Devi were impleaded. The brief facts as mentioned in the complaint are that the accused being known to the complainant took a loan of ₹1,80,000/- from him. In order to discharge his existing liability, the accused issued a cheque bearing No.508640 dated 14.6.2011 for ₹1,80,000/-. When the cheque was presented for encashment, it was 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, Ludhiana, after appreciating the evidence acquitted the accused vide judgment dated 21.3.2015. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed. Lower Court record was also summoned.

Notice of motion was issued in this case.

Earlier Mr. Rahish Pahwa, learned Advocate has appeared for

the respondents. But today, no one has appeared on behalf of the respondents to argue the case.

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

After hearing the learned counsel for the applicants and after going through the record, I find that the accused took the defence that the complainant was partner with the accused and having all documents including the cheque book in his custody. Due to this advantage, the complainant has forged and fabricated the above said cheque. There is no pre-existing legal liability towards the complainant. There is no such evidence as to when the complainant gave the loan to him and nor the complainant was in capacity to give the loan. There are number of other transactions in account of the complainant after the issuance of the cheque in question.

A perusal of the record shows that first of all no, date, month or year had been mentioned as to when the complainant given this loan. There are no particulars of any type to show this loan transaction. There is no document of any type on the record to show this loan transaction. No receipt or security document had been taken at the time of advancing the loan to the accused by the complainant. In cross-examination, CW-1 Prem Sagar admitted that the cheque number is mentioned as 408640. He also stated that the accused had also taken the loan so many times from him but he returned the same to him. Importantly, he had not prepared any receipt regarding the said loan. He had also not shown the said amount in his sale

tax returns. The facts that no date, month or year or any particulars have been mentioned regarding the loan transaction nor any security documents etc. have been obtained at the time of advancing the loan nor there is any document of any type to show the loan transaction and that there is also nothing as to when the loan was demanded by the accused go to show that there is no such alleged transaction. Furthermore, the complainant himself stated in cross-examination that so many times he advanced the loan and the accused returned the same to him. No record of any type had been produced showing any other loan. Even in this case, no document had been shown as to when the money was given and on which date and as to how the money was returned and how this liability remains.

I have gone through the findings given by the learned Judicial Magistrate Ist Class, Ludhiana, which have been given after appreciating the evidence in right perspective. Nothing has been pointed out as to how the findings given by learned Judicial Magistrate Ist Class, Ludhiana, are perverse or against the evidence. 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.

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.

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