In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-494-MA of 2016

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Date of decision:24.3.2017

Gurjinder Singh

...Applicant

v.

Rajinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashish Aggarwal, 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 Rajinder Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 20.11.2015 passed by learned Additional Sessions Judge, Amritsar, vide which the respondent has been acquitted from the charge under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') in appeal filed against the judgment and order dated 26.3.2015 passed by learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib, District Amritsar, convicting the accused-Rajinder Singh for the offence under Section 138 of the NI Act and sentencing him to undergo rigorous imprisonment for six months and to pay compensation of ₹4 Lakhs to the complainant.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal dated 20.11.2015 passed by learned Additional Sessions Judge, Amritsar, which is likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgment of acquittal is based on mis-appreciation of facts of the case, the evidence on the record and settled principles of law governing the matter in issue, hence the same is liable to be set aside. It has also been stated that the impugned judgment passed by the learned Additional Sessions Judge, Amritsar, is based on surmises and conjectures and the same is bad in the eyes of law. 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 Gurjinder Singh-complainant filed a complaint against Rajinder Singh-accused/respondent under Section 138 of the NI Act. The brief facts of the case as mentioned in the complaint are that the accused took a friendly loan of ₹4 Lakhs from the complainant in the month of May, 2012 and in discharge of his legally enforceable debt and liability, the accused issued a cheque bearing No.215000 dated 24.12.2012 for ₹4 Lakhs which on presentation to the Bank returned back unpaid with the remarks "insufficient funds". Legal notice was given to the accused and when the amount was not paid, the complaint was filed.

The defence raised by the accused in the present case is that he had been falsely implicated. The cheque in question including other cheques and documents were lost and DDR in this connection was got registered on 12.8.2011 with Police Station Tarsikka, which was handed over to bank official, who acknowledged the same on 13.8.2011. It is also the defence of the accused that agreement Ex.C.5 is after thought and has been prepared just to create evidence. He did not receive any amount from the complainant as alleged.

The learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib, after appreciating the evidence convicted and sentenced the accused vide judgment and order dated 26.3.2015 as mentioned above. Aggrieved from this judgment and order, the accused filed appeal before the learned Additional Sessions Judge, Amritsar, which was allowed and the accused has been acquitted from the charge as framed against him vide judgment dated 20.11.2015. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed. Lower Court record was also summoned.

After hearing the learned counsel for the applicant and after going through the record, I find that the findings given by the learned appellate Court are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the appellate Court and as to which material evidence has not been considered by the appellate Court. The accused has raised a defence which is probable i.e. the cheque in question and other cheques along with documents had been lost and he got DDR registered on 12.8.2011 and the information was given to the Bank qua the loss of those cheques on 13.8.2011, which has been duly proved on the record. If the DDR had been got registered by the accused on 12.8.2011, then the question of issuing the cheque on 24.12.2012 does not arise. Further from the record, I find that no date has been mentioned when the loan was given. It is simply written as May 2012. No document, receipt etc. had been obtained as security document at the time of advancing the loan. The appellate Court further held that it is clear from the perusal of the cheque in question that actually cheque Ex.C.1 bears the signatures of the accused and it is not the case of the accused that the cheque in question does not bear his signatures. The findings given by the learned Additional Sessions Judge, Amritsar in appeal are as per evidence. The accused has produced DW-1 Deputy Manager, State Bank of India, Branch Tangra, to corroborate the defence. The learned trial Court has failed to appreciate the documentary evidence i.e. regarding the loss of the cheques, registration of DDR dated 12.8.2011 and also the intimation sent to the Bank informing about the loss of cheque book. There is no discussion as to why these documents had not been relied upon by the trial Court. Further, the learned appellate Court has discussed the cross-examination of the complainant, who stated that he is having no bank statement. He is not tax payee. The complainant admitted that he brought this amount from one Kartar Singh, who happened to be commission agent and on 31.5.2012 he executed one agreement with Kartar Singh from whom he had obtained ₹4 Lakhs on interest @ 12% per annum. Kartar Singh had not been examined by the complainant. Further more, it also looks unnatural that the complainant would take loan of ₹4 Lakhs on 12% interest per annum to give to the accused without getting any document executed from him and without any condition of interest. When the complainant executed the agreement with Kartar Singh for obtaining the loan as to why he had not got any security document or receipt etc. from the accused. The learned appellate Court has specifically held that as per the record the cheque in question has been mentioned in that DDR. The appellate Court had the doubt on the capacity of the complainant to advance such a huge amount. The findings given by the learned Additional Sessions Judge in the appeal are correct as per evidence and law. In no way, these findings can be held as perverse.

Therefore, from the above discussion, I find that the accused has been rightly acquitted by the learned appellate Court. The judgment passed by the learned appellate 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 24, 2017. **(Inderjit Singh)**
Judge

hsp

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