

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.26442 of 2015
and
Criminal Misc. No.A-1407-MA of 2015

.....

Date of decision:2.3.2017

Som Nath

...Applicant

v.

J.P. Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. M.S. Cheema, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.26442 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 32 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1407-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against J.P. Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 6.5.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

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

From the record, I find that Som Nath-complainant filed a complaint against J.P. Singh-accused/respondent under Section 138 of the NI Act. The brief facts of the complaint are that the accused was working as travel agent. On 23.10.2013, the complainant paid ₹5.00 Lakhs as advance to the accused regarding preparation of his passport and securing foreign employment. The accused failed to perform his agreed performance, whereupon he asked the accused to refund his money. The accused, in order to discharge his liability issued cheque bearing No.203535 dated 20.12.2010 for ₹2,20,000/- of HDFC Bank Ltd., Mohali, after deducting ₹30,000/- towards his expenses. When the cheque was presented for encashment, it was returned back unpaid with the remarks "account closed".

A perusal of the judgment passed by the trial Court shows that the reasoning have been given as per evidence and law. The judgment passed by the trial Court cannot 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 record shows that the accused examined DW-1 Sumesh Sharma, Deputy Manager, HDFC Bank, Mohali, who stated that the cheque book from which cheque No.203535 was issued, was issued to M/s Saber Gems and Jewels and Sh. Cherry is the proprietor of M/s Saber Gems and Jewels. A perusal of the record shows that the cheque in question is stated to have been signed by J.P. Singh, but this cheque book was issued to M/s Saber Gems and Jewels, whose proprietor is Cherry. This cheque book relates to the account of M/s Saber Gems and Jewels and not to the account of J.P. Singh. There is also nothing on record that J.P. Singh is the same person as Shri Cherry, which means that even if it is taken that this cheque had been drawn by the accused, even then it was not drawn from the account of the accused. One of the necessary ingredients under Section 138 of the NI Act is missing.

The learned trial Court after discussing the provisions of Section 138 of the NI Act found that the offence under Section 138 of NI Act is not made out.

Even at the time of arguments, learned counsel for the applicant admitted that the accused cannot be convicted under Section 138 of the NI Act, but he argued that the Court below should have summoned the accused under Section 420 IPC. A perusal of the record shows that neither the complaint has been filed under Section 420 IPC nor there is any averment in the complaint proving the ingredient of Section 420 IPC.

A perusal of the judgment passed by the learned trial Court shows that the findings are correct as per evidence and law and do not

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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 2, 2017.

(Inderjit Singh)
Judge

hsp

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