

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.11663 of 2016  
and  
Criminal Misc. No.A-714-MA of 2016

.....

Date of decision:6.2.2017

Sushil Kumar

...Applicant

v.

Tej Pal

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. P.K.S. Phoolka, Advocate for the applicant.

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**Inderjit Singh, J.**

Cr. Misc. No.11663 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 15 days in filing the appeal along with the application seeking leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-714-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Tej Pal-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 5.1.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 applicant is very much sanguine about the success of the appeal on the strength of the grounds taken therein and if the leave is not granted to file appeal, then the respondent shall flee away from the Court of justice. 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 Sushil Kumar-complainant filed a complaint against Tej Pal-accused/respondent under Section 138 of the NI Act. It has been mainly stated in the complaint that in discharge of his existing liability towards the complainant, the accused had issued cheque bearing No.228349 dated 15.9.2013 in the sum of ₹3,61,000/-. The said cheque on presentation for encashment was returned with the remarks "Account closed". Thereafter, legal notice was issued and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, after appreciating the evidence produced on record acquitted the accused vide judgment dated 5.1.2016. Aggrieved from the judgment, the present appeal along with application under Section 378(4) Cr.P.C seeking leave to file appeal has been filed.

I have gone through the record and have heard learned counsel

for the applicant.

From the record, I find that first of all no date, month or year had been mentioned regarding the liability. No particulars have been mentioned in the complaint as to how the liability arose. There is no document on record to prove this loan transaction and further more no security document of any type has been taken by the complainant at the time of giving the money. The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, relied upon the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Criminal) 1028, wherein it has been held that where the complainant alleges that the cheque was issued for repayment of loan and where no document or other material has been brought on record to prove loan transaction and where date of demand of loan and giving of loan is not stated in the complaint, the same is fatal to the case of the complainant and the accused is entitled to acquittal. The law laid down in this judgment fully applies to the facts of this case.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, from the evidence found that there is no mention of the existing liability when did it arise and as to how it arose. This fact has not been mentioned even in the examination-in-chief. During cross-examination, the complainant stated that he has given friendly loan to the accused. However, there is also nothing as to what type of friendly relations were there between the complainant and the accused. The complainant in his cross-examination stated that he had done partnership business of commission agent with the accused in February 2009, but no proof to this effect has been brought on

record by the complainant. This loan amount is also not found mention in his Income-tax return. The complainant has stated that he borrowed the money from his father for the purpose of giving the same to the accused, but the complainant for reasons best known to him has not got examined his father to prove his contention to this effect. The complainant relied upon one affidavit dated 16.3.2011. The Court below held during his cross-examination the complainant did not say anything to this effect. Rather, he stated that money was allegedly given by him to the accused, but nothing was reduced into writing between the parties and no affidavit or pronote was executed. It has been held by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, that had any such affidavit been in existence since 16.3.2011, the complainant could have easily mentioned regarding this fact in his complaint, examination-in-chief or in his cross-examination. The Court below also discussed the statement of stamp vender etc. which also cannot be believed and creates doubt regarding the execution of this affidavit. Further more, the defence of the accused since the very first date of his appearance has been to the effect that he had not issued the cheque in question in favour of the complainant in discharge of any liability. He stated that the complainant happens to be relative of one Jasbir Kumar, who was earlier running the business of timber in partnership with Suraj Bhan in the name and style of M/s Suraj Timber. After some time a dispute arose between Jasbir Kumar and Suraj Bhan and Jasbir Kumar approached him and stated that he does not want to continue as a partner with Suraj Bhan and offered the accused to join him as a partner with him. It is the case of

the accused that he invested ₹2 Lakhs in Suraj Timber and started working in partnership with Jasbir Kumar. At that time, Jasbir Kumar took four blank signed cheques from him including the cheque in question and also took a duly signed stamp paper from him on the pretext that the stamp papers would be typed later on and partnership deed would be reduced on the same because partnership deed which was earlier existing between Jasbir and Suraj Bhan had to be dissolved. Jasbir Kumar, who was examined as a witness by the complainant in his cross-examination denied having done any partnership business with the present accused though the said partnership was earlier admitted by the complainant.

In view of the above discussion, I find that the defence raised by the accused is probable one. The presumption under Section 139 of the NI Act has been duly rebutted. The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, has appreciated the evidence in right perspective. In no way, the 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.

Therefore, from the above I find that the judgment dated 5.1.2016 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, 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 6, 2017.

**(Inderjit Singh)**  
**Judge**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |