

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1638-MA of 2015

.....

Date of decision:17.3.2017

Nirmal Singh

...Applicant

v.

Paramjit Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sushil Grover, Advocate for the applicant.

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Inderjit Singh, J.

Nirmal Singh-complainant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Paramjit Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 15.7.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 accused/respondent has failed to rebut the presumption under Section 139 of the NI Act or any kind of fraud. It has also been stated that important question of law of general importance arises in the case, as

such, the application deserves to be allowed. It has also been stated that the learned trial Court has passed the impugned judgment, which is wrong, illegal, arbitrary and based on conjectures and surmises which is liable to be dismissed. 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 Nirmal Singh-complainant filed a complaint against Paramjit Singh-accused/respondent under Section 138 of the NI Act. As per the facts mentioned in this case, the accused approached the complainant in the presence of common friend Mr. Bhupinder Singh to borrow a friendly loan of ₹15,00,000/- to purchase a factory. It is alleged that considering the request of the accused genuine, the complainant gave him a friendly loan of ₹15 Lakhs in cash by taking OD limit of ₹12 Lakhs from his banker and ₹3 Lakhs by arranging from friends circle. The accused issued cheque bearing No.526721 dated 17.8.2013 for ₹15 Lakhs, which on presentation for encashment was returned back unpaid with the remarks “Exceeds arrangement”. Legal notice was issued to the accused and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Faridabad, after appreciating the evidence acquitted the accused vide judgment dated 15.7.2013. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed.

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

trial Court are correct as per evidence and law. The reasoning given by the learned trial Court, in no way, can be held as perverse or against the evidence or law. The evidence has been appreciated in right perspective. 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 complaint itself shows that no date, month or year has been mentioned as to when the loan of ₹15 Lakhs has been given. There is no date when the loan was demanded and the complainant asked for the return of the loan. No particulars of any type have been mentioned. Otherwise also, it looks unnatural that the complainant would take the loan of ₹12 Lakhs on interest from the Bank and then will take another ₹3 Lakhs from the friends circle and will give it to the accused without any interest. There is no document of any type to show this loan transaction. Even bank record has not been produced to prove the fact that ₹12 Lakhs loan was taken by the complainant, which was given to the accused. Furthermore, no receipt or security document was taken at the time of advancing of loan. Furthermore, Bhupinder Singh, in whose presence the accused approached the complainant for loan, has not been examined. It is also discussed by the learned Judicial Magistrate Ist Class that even in cross-examination, the complainant has changed his version and stated that ₹3 Lakhs were lying in his house. During cross-examination, the complainant has admitted that the accused borrowed ₹60,000/- or ₹70,000/- only from him and at that time handed over the cheque in question. The trial Court held that if the accused

borrowed ₹60,000/- or ₹70,000/-, he will not hand over the cheque of ₹15 Lakhs to the complainant. The learned trial Court placed reliance upon the judgment of Hon'ble Supreme Court in Vijay v. Laxman and another, 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 a circumstance for rebuttal of presumption. The law laid down in this judgment fully applies to the facts of the present case.

The findings given by the learned trial Court are correct as per evidence and law 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.

March 17, 2017.

(Inderjit Singh)
Judge

hsp

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