In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1639-MA of 2015 (O&M)

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Date of decision:12.1.2017

Sanjeev Batra

...Applicant

v.

Sumit Arora

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Adarsh Jain, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sumit Arora for grant of leave to appeal against the judgment dated 7.8.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act').

It has been mainly stated in the application that the learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 7.8.2015 has acquitted the respondent of charge under Section 138 of the Act. The trial Court has wrongly recorded finding that presumption under law that cheques were issued in discharge of legal debt was disproved. It has been stated that the trial Court has failed to consider the facts and circumstances of the case and the presumption attached in view of the provisions of Section 138 of the NI Act. It has, therefore, been prayed that leave to appeal may be granted.

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

From the record, I find that Sanjeev Batra-complainant filed complaint against Sumit Arora under Section 138 of the Act. It is mainly stated that the father of accused requested to the complainant in the month of July 2013 that accused is in great need of money for a sum of ₹6 lakhs and keeping in view the relations with father of the accused, the complainant could not ignore his request and gave ₹6 lakhs to the accused as friendly loan. The complainant demanded his money back after the expiry of three months as he was in dire need of money for his personal use, then the accused after admitting his legal liability issued two cheques bearing Nos.976659 and 976656 dated 1.10.2013 for ₹3 lakhs each, which on presentation before the bank were returned with the remarks "Drawer signatures differ". A legal notice was issued. When the amount was not paid, the complaint was filed.

The accused denied the correctness of the evidence produced against him in the statement under Section 313 Cr.P.C. The accused had taken the defence that he never borrowed any alleged amount of ₹6 lakhs from the complainant. The complainant himself was not having sufficient financial capacity for advancing such a huge amount. In defence, the case of the accused is that in fact he had borrowed an amount of ₹20,000/- only and against that amount cheques in question were handed over as blank unsigned cheques and the complainant himself has marked the signature of the accused upon the same and has misused the cheques of the accused.

The learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 7.8.2015 after appreciation of the evidence acquitted the accused.

I have gone through the judgment dated 7.8.2015 passed by the learned Judicial Magistrate Ist Class, Faridabad. The reasoning has been given as per evidence and law. In no way, it can be held as perverse or against the evidence or law. The evidence has been appreciated by the Court below in right perspective. Firstly, no specific date has been mentioned when this amount of ₹6 lakhs was given. No source of income had been mentioned in the complaint. No receipt or any type of security document had been taken from the accused while lending such a huge amount. There is no document on record to show this loan transaction. The complainant when appeared in the Court as a witness had stated that the amount was advanced by him to accused after selling his property i.e. House No.5-M/7 and House No.5 situated at NIT, Faridabad and he also tendered sale deed Ex.CX executed in favour of Satish Nagpal.

In the present case, the complainant in the complaint stated that he had advanced a loan of ₹6 lakhs in the month of July 2013, but the sale deed is of 24.10.2013, which is three months after advancement of the loan. Further the complainant stated that he received the amount of ₹12,00,000/- as earnest money out of which the loan was advanced by him, but this testimony of the complainant is not reliable because in defence the accused had tendered document Ex.DW.1/A, the sale deed of the same property, which was purchased by the complainant himself in August 2013, which means after the advancement of the loan, the same property was purchased by the complainant in August 2013, which was sold in October 2013. So this plea falsified the version of the complainant that he advanced the loan of ₹6 lakhs after selling the houses. The Court below had rightly relied upon the law that no date of demand and advancement of loan has been mentioned in the complaint nor in the affidavit of the complainant. There is no document to show this loan transaction. No receipt was taken. No security document was executed. The Court below in these circumstances held that the presumption under Section 139 of the NI Act has been duly rebutted by the accused. Further the Court below also held that the two cheques of the same amount of ₹3 lakhs each of the same date had been given as per the complainant's version. The Court below observed that it is not understandable as to why he issued two cheques of the same amount on the same day. Further more, both the cheques had been returned by the Bank with the remarks “Drawer signature differ”. This fact also supports the defence version. Further more, reply to the legal notice has been given in which the same defence has been raised by the accused.

Keeping in view the above discussion, I find that the findings given by the Court below are correct, as per evidence and law and do not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal.

Hence, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

January 12, 2017. **(Inderjit Singh)**
Judge

hsp

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