In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.34798 of 2015
and
Criminal Misc. No.A-1755-MA of 2015

.....

Date of decision:24.3.2017

Jai Pal

...Applicant

v.

State of Haryana and another

...Respondents

....

(2) Criminal Misc. No.35387 of 2015
and
Criminal Misc. No.A-1773-MA of 2015

.....

Jai Pal

...Applicant

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Diwan S. Adlakha, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. Nos.34798 & 35387 of 2015:

For the reasons mentioned in the criminal miscellaneous applications, the delay of 25 and 23 days respectively in filing the appeals along with applications seeking leave to file appeals is condoned.

The criminal miscellaneous applications stand disposed of.

Cr. Misc. Nos.A-1755-MA & 1773-MA of 2015:

This order will dispose of the above mentioned two criminal miscellaneous applications filed under Section 378(4) Cr.P.C. against State of Haryana and Tej Pal-respondents seeking grant of leave to file appeal against the impugned judgments of acquittal dated 14.7.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the complaints filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') had been dismissed and the accused/ respondent No.2 has been acquitted.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that the learned trial Court while acquitting the accused has not appreciated the facts on record and evidence adduced by the applicant in a true and correct perspective and passed the orders on the basis of conjectures, surmises and presumption which are liable to be set aside. It has, therefore, been prayed that these applications seeking leave to file appeals be allowed and leave be granted to the applicant to file appeals.

From the record, I find that Jai Pal-complainant filed complaints against Tej Pal-accused/respondent No.2 under Section 138 of the NI Act. The facts have been taken from Criminal Misc. No.A-1755-MA of 2015. It has been stated in the complaint that the accused had taken loan of ₹3,10,000/- from the complainant on 19.12.2012 vide writing of even date and had also issued two cheques bearing Nos.538261 and 538262 upon an understanding that if the amount so taken by the accused is not returned to the complainant, the complainant will be at liberty to recover the amount as per law. It is case of the complainant that in discharge of his existing liability towards the complainant the accused issued two cheques No.538261 and 538262 dated 26.2.2013 and 2.3.2013 in the sums of ₹2 Lakhs and ₹1,10,000/- respectively. When these cheques were presented to the bank for encashment, these were returned with the remarks "Funds insufficient". Legal notices were issued. When the amount was not paid, then the complaints were filed.

The defence of the accused is that he had never issued the cheques in question in favour of the complainant in discharge of any existing legal liability. He further stated that in fact the complainant is a close relative of one Jasbir Kumar, who is doing the business of timber in the name and style of M/s Suraj Timber. He further stated that at one point of time Jasbir Kumar was doing said business in partnership with one Suraj Bhan, but later on a dispute arose between Jasbir Kumar and Suraj Bhan and Jasbir Kumar offered him to become partner in M/s Suraj Timber in place of Suraj Bhan. He further stated that he agreed to the said proposal of Jasbir Kumar and invested ₹2 Lakhs in M/s Suraj Timber as he was already working as a Timber Merchant in the timber market. He also stated that at the time of initiation of partnership between him and Jasbir, Jasbir took four blank cheques from him and also took one blank singed stamp paper from him upon an understanding that later on the said stamp paper will be typed and partnership deed will be typed on the same, as firstly the partnership between Suraj Bhan and Jasbir Kumar had to be dissolved before executing fresh partnership deed. He further stated that thereafter Jasbir Kumar had misused the cheques in question through the present complainant, who happens to be the brother-in-law of Jasbir Kumar.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide judgments dated 14.7.2015 dismissed both the complaints and acquitted the accused. Aggrieved against these judgments, the appeals along with applications seeking leave to appeals have been filed.

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

From the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, are correct as per evidence and law and, in no way, these 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.

The complainant in cross-examination admitted that he is brother-in-law of Jasbir Kumar. He also admitted that he knows Suraj Bhan. He also admitted the fact that Jasbir Kumar and Suraj Bhan were earlier doing timber business in partnership. He further admitted the fact that he has filed a case for dishonour of cheque of ₹4 Lakhs against Suraj Bhan also. He further stated that his income is not of taxable limits. He further stated that he is labourer as well as an agriculturist. He further stated that he had given ₹3.10 Lakhs to the accused in cash. He further stated that out of ₹3.10 Lakhs, ₹2 Lakhs were lying with him and he had arranged ₹1.10 Lakhs by collecting the same from different persons. He then immediately changed his stand and stated that out of ₹3.10 Lakhs, he had taken ₹2 Lakhs from his brother and ₹1.10 Lakhs from one Sukhbir. He also deposed qua the agreement Ex.C.1 that it was typed, but he did not know the name of the scribe. He stated that when the agreement was exeucted, accused, Bharat Bhushan, Bansi Lal and Jasbir Kumar were present at the spot. He further stated that he had not signed the agreement Ex.C.1. He was thereafter confronted with agreement Ex.C.1 upon which he identified his signatures. He also refused the suggestion that he had never given ₹3.10 Lakhs to the accused. He further refused the suggestion that the accused had joined the partnership business after retirement of Suraj Bhan from partnership business which was being run by him in partnership with Jasbir. The accused has examined Suraj Bhan as DW-1 to support the defence version. DW-2 Ishpal Singh, Inspector, Income Tax posted at Yamuna Nagar stated that as per the record being maintained at Income Tax Department, the present complainant has not filed his Income Tax return for the financial years 2010-11 till 2013-14. In view of the evidence on record, I find that first of all the defence raised by the accused has been supported and corroborated from the cross-examination of the complainant. Secondly, it looks unnatural that the complainant, who has not even single rupee with him and he by borrowing ₹2 Lakhs from his brother and ₹1.10 Lakhs from one Sukhbir, will give ₹3.10 Lakhs to the accused without any interest. Furthermore, the brother of the complainant and the other person from whom he had borrowed the amount had not been examined. Moreover, nothing has been shown as to what type of relations the complainant had with the accused that he borrowed the money from other persons and had given to him. There is nothing on record about the close relations between the complainant and the accused. The defence raised by the accused is duly supported and corroborated even by the statement of the complainant. Furthermore, the capacity of the complainant itself proved from his statement that he was not having a single penny and he borrowed the total amount from other persons. He himself stated that he is a labourer as well as an agriculturist. Nothing is there on record to show his capacity to give such a huge amount to the accused. He had not filed any Income Tax return. All these facts show that the accused has raised probable defence to rebut the presumption under Section 139 of the NI Act.

Therefore, from the above I find that the judgments dated 14.7.2015 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, are 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 appeals. Consequently, finding no merit in the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same are dismissed.

March 24, 2017. **(Inderjit Singh)**
Judge

hsp

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