

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1895-MA of 2015

.....

Date of decision:6.2.2017

Devinder Singh

...Applicant

v.

Shri Pal alias Shri Pal Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arvind Singh, 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 Shri Pal alias Shri Pal Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 8.10.2015 passed by learned Judicial Magistrate Ist Class, Assandh (Karnal), 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 accused has been acquitted under Section 138 and 142 of the NI Act ignoring the presumption drawn in favour of the

complainant under Section 138 of the NI Act. It has, therefore, been prayed that this application seeking leave to file appeal may 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 Devinder Singh-complainant filed a complaint against Shri Pal alias Shri Pal Singh-accused/respondent under Section 138 of the NI Act. The brief facts of the present complaint are that accused Shri Pal alias Pal Singh along with his wife Smt. Rekha Devi were maintaining family relations with the complainant and his other family members including his uncle, namely, Dharambir and his cousins, namely, Surjeet Singh and Aditya Dhillon. The accused came to the complainant and his other relatives on 25.11.2012 and told them they were already negotiating with Shri Randhir Singh (uncle of the complainant) regarding purchase of his 3 acres of agricultural land situated at Village Bassi for ₹15 Lakhs per acre and that they are short of funds and requested the complainant and his relatives to join them in purchasing the said land. At that time, the complainant and his relatives requested him to join them in purchasing the said land as the complainant were having family difference with Randhir Singh. On account of the aforesaid facts, the accused and his wife fraudulently induced the complainant and his relatives that in case they would disclose to Radhir Singh that the complainant and his relatives are also going to purchase his land along with them, then in that eventuality Randhir Singh may refuse to enter into the agreement to sell with accused

and his wife. The complainant on account of aforesaid inducement paid a sum of ₹5 Lakhs, Dharambir Singh paid a sum of ₹8 Lakhs, Surjeet Singh paid a sum of ₹6 Lakhs and Aditya Dhillon paid a sum of ₹7 Lakhs to the accused and it was agreed that the remaining sale consideration as per their respective shares would be paid by them at the time of executing and getting registered the sale deed. Later on, they came to know on inquiry from Randhir Singh that the accused and his wife were simply visiting him and had never negotiated qua the purchase of land. On demand, the accused issued cheques bearing Nos.107407, 107405, 107404 and 107406 in favour of the complainant on 28.1.2013. The cheque in question is 107407 dated 28.1.2013 for ₹5 Lakhs which on presentation with the bank returned back with the remarks “insufficient funds”. Legal notice was sent and the reply to that legal notice was also sent by the accused. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Assandh (Karnal), after appreciating the evidence produced on record acquitted the accused vide judgment dated 8.10.2015. 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 as to when this amount was paid to the accused. Secondly, when the complainant came to the witness box, he stated that at

the time of giving money Shri Pal did not tell him as to from whom he was purchasing the land. This statement makes the version of the complainant contradictory as the main case of the complainant is that as they were not having good relations with Randhir Singh, therefore, they gave the money to the accused to purchase the land from him on their behalf also and later on the sale deed would be executed in favour of the complainant. Therefore, this statement that Shri Pal did not tell him as to from whom he was purchasing the land makes his version unreliable. The complainant further stated that this fact was told by one Mahabir Singh to him after about one and half months from the date of giving money to Shri Pal that he was purchasing land from his uncle Randhir Singh. The complainant also admitted that he did not demand any agreement to sell to purchase the land from Shri Pal. The complainant admitted that Shri Pal was doing the work of combine and he used to sell his crops on their shop. The suggestion given to the complainant that complainant's uncle Mohinder Singh had taken lift in the car of Shri Pal in May 2012 and had stolen some cheques including the cheque in question at that time was denied by him.

In defence, the accused had examined DW-1 Balwinder Singh, Additional Ahlmad in the Court, who had proved order dated 11.12.2014 in case titled "Shri Pal Vs. Mohinder etc." as Ex.D.1 and copy of complaint as Ex.D.2. In defence, the accused further examined Rahul, Assistant Manager, HDFC, Bank as DW-2, who proved stop payment certificate issued by the Bank as Ex.D.3. Deepak was examined as DW-3, who proved the report about stop payment as Ex.DW.3/A. Hardeep Singh, Clerk, HDFC

Bank was examined as DW-4, who proved the report regarding stop payment of cheques No.107403 to 107410. He submitted that the payment was stopped on the ground that cheque book had been lost. The Court below held that when the payment of the cheque in question stands stopped on 23.8.2012, therefore, the version that the complainant issued cheque on 28.1.2013 after about five months cannot be believed. As per the complainant's version that the accused came to him on 25.11.2012 and told about the offer purchasing the land also cannot be believed as from this date much earlier the payment of these cheques had been stopped.

From the record, I find that the presumption under Section 139 of the NI Act has been rebutted by raising probable defence by the accused and further giving no particulars i.e. on which date, month or year the loan was given and at which place the loan was given and further no document on record to prove the loan transaction rebuts the presumption. Furthermore, no security document had been taken at the time of giving of the loan and in view of the defence evidence produced by the accused, I find that the findings have been given by appreciating the evidence 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. Nothing has been pointed out as to how the findings given by the Court below are perverse or illegal or against the evidence.

Therefore, from the above I find that the judgment dated 8.10.2015 passed by the learned Judicial Magistrate Ist Class, Assandh, 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 and the same are upheld.

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

hsp

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