

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1958-MA of 2015

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Date of decision:24.3.2017

Gursewak Singh

...Applicant

v.

Kamaldeep Singh alias Sony

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gourav Goel, Advocate for the applicant.

Mr. Jitenderpal Singh, Advocate for the respondent.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(4) Cr.P.C. against Kamaldeep Singh alias Sony-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 26.8.2015 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, 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, 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 Gursewak Singh-complainant filed a complaint against Kamaldeep Singh alias Sony-accused/respondent under Section 138 of the NI Act. It has been stated in the complaint that the accused in order to discharge his legal liability, issued a cheque bearing No.000002 dated 19.6.2014 for ₹1,50,000/- which on presentation returned back unpaid with the remarks “funds insufficient”. Legal notice was issued and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Fatehgarh Sahib, vide judgment dated 26.8.2015 acquitted the accused. Aggrieved from this judgment, the present appeal along with application seeking leave to appeal has been filed.

Notice of motion has been issued in this case.

Mr. Jitenderpal Singh, learned Advocate has put in appearance on behalf of the respondent and contested this application.

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

From the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Fatehgarh Sahib, 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.

First of all from the evidence on record, I find that the

complainant no where mentioned as to what was the liability and on which date, month or year this liability has arisen. No particulars of any type have been mentioned in the complaint. It has been simply written that the accused in order to discharge his legal liability issued the cheque. No document of any type has been produced to show this loan transaction. No security document, receipt etc. has been obtained at the time of granting the loan. The learned trial Court observed that the complainant has not even stated in complaint or in his examination-in-chief as to what was the liability for which the cheque Ex.C.1 was issued. Rather, counsel for the complainant argued that the same is a matter of presumption. The trial Court held that the complainant was at least required to establish the factual matrix which lead to raising of presumption and which the accused has to rebut. But the complainant has failed to do so. The trial Court held that it is not even clear that what were the dealings between the complainant and the accused and what was the liability of the accused towards the complainant. Once the liability is not even disclosed, the accused cannot be expected to rebut the same nor can the trial Court determine its existence. The trial Court further held that while cross-examining the complainant, the accused has set up a probable defence that he had in fact issued the cheque to one Narinder Kumar as security and no liability or debt existed on the day of issuance of cheque. Although, the complainant in his cross-examination stated that he had given ₹1,50,000/- to the accused on interest through one Vikrant, but he stated that he had no business dealings with the accused and he does not otherwise lend money on interest. This cross-examination of the

complainant supports the defence version. The trial Court held that once, the accused had raised the defence that the cheque was issued to one Narinder Kumar as a security and there were no business dealings with the present complainant, this version has been duly supported and corroborated from the case of the complainant himself, who had not disclosed as to what type of liability arose and he does not otherwise lend money on interest. The trial Court held that it was incumbent upon the complainant to examine any other witness to prove the alleged transaction of loan between the complainant and the accused, which has not been done in the instant case. A suggestion has been given to the complainant that he had knowledge that there was no money in account of the accused on the day of issuance of cheque is concerned, the same does not support the case of the complainant. In fact the accused had not denied issuance of cheque, but has set up a defence that the cheque was issued to Narinder Kumar as security. Thus, the suggestion only amounts to admission qua issuance of cheque but not qua issuance of cheque to the complainant. No particulars have been given as to on which date, month or year the money was given on which this liability arose. No security document was taken. There was no document to show this transaction.

Therefore, in view of these circumstances, I find that the presumption has been rebutted by the accused. 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 24, 2017.

(Inderjit Singh)
Judge

hsp

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