

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-2010-MA of 2015

.....

Date of decision:17.3.2017

Som Nath

...Applicant

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

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

.....

Inderjit Singh, J.

Som Nath-complainant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana and another-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 5.10.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 No.2 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 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 order on the basis of conjectures, surmises and presumption. 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 Som Nath-complainant (since deceased) through his legal heirs filed a complaint against Hitesh Dua-accused/respondent No.2 under Section 138 of the NI Act. The brief facts of the case, as stated in the complaint, are that in discharge of his existing legal liability towards the complainant, the accused had issued cheque bearing No.006098 dated 9.10.2013 in the sum of ₹49,000/-. The cheque when presented for encashment was dishonoured and returned back with the remarks “funds insufficient”. Legal notice was issued to the accused and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, after appreciating the evidence acquitted the accused vide judgment dated 5.10.2015. 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. 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 when this liability arose. There is no particular qua the liability in the complaint. No date, month or year had been mentioned as to when the amount was taken as a loan or otherwise liability arose. No security document had been taken at the time when this amount was given to the accused/respondent No.2. There is no document on the record to show the transaction in question. The trial Court held that before adjudicating the present case, it would be appropriate to mention that present case is one of the five cases which had been filed by the present complainant and his son Kasturi Lal against accused. In all of those five cases, a total of eight cheques are involved. It is also held that four cheques of ₹49,000/- each had been allegedly issued by the accused to Kasturi Lal and his father i.e. present complainant-Som Nath (since deceased) on account of friendly loan taken by the accused from the complainant and his father. Four cheques for an amount of ₹1 Lakh each, as detailed in the judgment, had been allegedly issued by the accused to Kasturi Lal on account of consideration amount for purchase of truck from Kasturi Lal. The trial Court while placing reliance upon the judgment of Hon'ble Supreme Court in Vijay v. Laxman and another, 2013 (1) R.C.R. (Criminal) 1028, 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 fatal to the case of the complainant and the accused is entitled to acquittal. The law laid down in this judgment fully applies to the facts of the present case.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, further discussed the facts of this case and held that it is admitted fact between both the parties that they were earlier undertaking partnership business which was ultimately dissolved on 29.7.2013 on account of disputes between the parties. The trial Court further held that the relationship between the parties were obviously strained even prior to 29.7.2013, which ultimately led to the accused and Kasturi Lal parting away. Under such circumstances, there could have been no situation whereby friendly loan could have been given by the complainant to the accused around the date of cheques and it is also not possible that the accused would have issued cheque to the complainant on 9.10.2013 which happens to be the date of the cheque. A perusal of the record shows that the findings given by the trial Court are correct as per evidence and law. The presumption under Section 139 of the NI Act has been duly rebutted from the case of the complainant itself. The trial Court has appreciated the evidence in right perspective. 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