

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-248-MA of 2015

.....

Date of decision:2.3.2017

M/s Fashion Square, Abohar

...Applicant

v.

Kamal Rajpoot (Nikku)

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajesh Hooda, Advocate for the applicant.

Mr. S.S. Grewal, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kamal Rajpoot (Nikku)-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.9.2014 passed by learned Judicial Magistrate Ist Class, Abohar, vide which the complaint filed under Sections 138 and 142 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 M/s Fashion Square through Tarun Takiyaar (partner)-complainant filed a complaint against Kamal Rajpoot (Nikku)-accused/respondent under Sections 138 and 142 of the NI Act. The brief facts of the complaint as noted down by the learned Judicial Magistrate Ist Class, Abohar in his judgment dated 9.9.2014 are as under:-

“Briefly stated the case of the complainant is that the complainant firm is doing the business in the name and style of M/s Fashion Square at Abhor and complainant firm is a partnership firm and Tarun Takiyaar is one of the partner of the complainant firm and being partner he is competent to do all the acts and deeds on behalf of the complainant firm. The accused worked in the complainant firm and during his service, he took advance amount from the complainant firm and the accused left the services. After making all adjustment in discharge of his legal liability towards the complainant firm, the accused issued a cheque no.001305 dated 21.3.2013 for Rs.70,000/- drawn on Allahabad Bank, Abhor (sic. - in) favour of the complainant firm from his account No.500036396135 and at the time of issuance of the said cheque will be encashed by his banker as and when the same is presented in the bank. On the assurance of the accused the complainant presented the above said cheque in his banker Axis Bank Ltd. Branch Abhor (sic. - Abohar) for encasement/collection purposes and the said cheque was sent to the banker of the accused for collection

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purpose but the banker of the accused did not honour the said cheque and returned the same unpaid alongwith cheque returning memo dated 25.3.2013 with the remarks "funds Insufficient". After getting the above said dishonoured cheque and returning memo from his banker the complainant approached the accused and narrated the factum of dishonoring of the said cheque and also requested to the accused to make the payment and a mandatory notice dated 6.4.2013 under Section 138 Negotiable Instrument Act under Regd. A.D. was served upon the accused by the complainant through his counsel. The accused has committed an offence punishable under Section 138 of Negotiable Instrument Act. Now after expiry of 15 days of the receipt of notice the accused has not made the payment and cause of action arises to file the present complaint. Hence the present complaint is filed.”

The learned Judicial Magistrate Ist Class, Abohar, after appreciating the evidence acquitted the accused. Aggrieved from this judgment, the present appeal along with application under Section 378(4) Cr.P.C. has been filed.

Notice of motion was issued in this case.

Mr. S.S. Grewal, learned Advocate has appeared on behalf of the respondent and contested this application.

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

A perusal of the judgment passed by the learned Judicial Magistrate Ist Class, Abohar, shows that the findings can not 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. A perusal of the record shows that no particulars of advanced amount given to the accused have been mentioned in the complaint. Even at the time of arguments learned counsel for the applicant could not tell as to on which date, month or year this advanced amount was given. Even there is nothing on record to show in the complaint as to whether the advanced amount was given on one date or on various dates. Similarly, there is no mention in the complaint as to how much amount had been advanced to the accused. The complainant in evidence produced computerized statements Ex.C.8 to Ex.C.13, but the learned Court below held that these have not been proved under 65-B(4) of the Indian Evidence Act etc. and these are inadmissible. Another bill Ex.C.12 has been produced which is also not signed by the accused. There is no document on record to show that the accused had either signed on any document after taking the advanced amount. It is also in the evidence that the accused was employee of the complainant and he also left the job in March 2012, but this cheque is of March 2013 i.e. after one year. There is no document on record to show as to how the settlement took place and as to what amount was found due. As there is no document proved by the complainant to show this transaction of advanced amount and no particulars are there, therefore, in view of this evidence of the

complainant and the defence taken by the accused that he was the employee and the blank cheques had been taken at the time of joining the complainant-firm shows that the defence taken by the accused is probable one. The presumption under Section 139 of the NI Act has been duly rebutted. The findings given by the learned Judicial Magistrate Ist Class, Abohar, are correct as per evidence and 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 2, 2017.

(Inderjit Singh)
Judge

hsp

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