

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-462-MA of 2015

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Date of decision:3.3.2017

Rajesh Kumar (since deceased) through his wife Pushpa
...Applicant

v.

Parveen Kumar
...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sant Lal Barwala, Advocate for the applicant.

Mr. S.N. Yadav, Advocate for the respondent.

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Inderjit Singh, J.

Pushpa-wife of the complainant-Rajesh Kumar (since deceased) has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Parveen Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 10.6.2014 passed by learned Judicial Magistrate Ist Class, Hisar, 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

been stated that the learned trial Court has not considered the proper facts and circumstances of the case and has not considered the settled law on this point. In this way, it is a fit case for the grant of leave to appeal. 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.

Notice of motion was issued in this case.

Mr. S.N. Yadav, 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 Rajesh Kumar (since deceased)-complainant filed a complaint against Parveen Kumar-accused/respondent under Section 138 of the NI Act. As per the version of the complainant on 8.6.2012, the accused had borrowed an amount of ₹3 Lakhs for a period of three months from the complainant for his domestic needs and in response to that the accused issued account payee cheque bearing No.040077 dated 8.6.2012 for a sum of ₹3 Lakhs. When the cheque was presented in the bank for encashment, it was returned back with the remarks “insufficient funds”. Legal notice was issued to the accused and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Hisar, after appreciating the evidence acquitted the accused. Aggrieved from this judgment, the present appeal along with present application seeking leave to appeal has been filed. Lower Court record was also summoned.

After hearing learned counsel for the parties and after going through the record, I find that the findings given by the trial Court vide judgment dated 10.6.2014 are correct as per evidence and law. There is nothing on record to show that these findings are perverse or against the evidence or law. There is nothing on record 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 there is not a single document to show this loan transaction. The complainant Rajesh Kumar had died during the pendency of the proceedings. His wife appeared as CW-1 but she was not knowing anything about the loan transaction nor it had taken place in her presence. The cheque was not given by the accused in her presence to Rajesh Kumar (since deceased). There is no mention of any particulars in whose presence the loan was given. As per the complainant's version, loan was given of ₹3 Lakhs on 8.6.2012 and the cheque is also of 8.6.2012 for the sum of ₹3 Lakhs. There is nothing on record to show the source of income in the present case.

The defence of the accused is that he had given the blank cheque to Dharampal Sharma father-in-law of the applicant and father of the complainant Rajesh Kumar (since deceased) at the time of purchasing feed etc. A perusal of the cross-examination shows that the complainant was running a shop for selling the feed. In cross-examination, CW-1 Pushpa stated that she did not know whether that shop was run by her father-in-law.

I have also seen the cheque in question. On the face of it, it is

clear that this cheque had not been filled by Parveen Kumar at the time of handing over the same. The signatures on the cheque of Parveen Kumar are in blue ink whereas the amount, date and body of the cheque had been filled with black ink. So, this fact supports and corroborates the defence version that the cheque was given as blank in which the amount was later on filled. The presumption under Section 139 of the NI Act has been duly rebutted. There is nothing to prove the loan transaction.

Therefore, from the above, I find that the accused has been rightly acquitted by the learned trial Court. The judgment passed by the learned trial Court is correct as per evidence and law and does 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 3, 2017.

(Inderjit Singh)
Judge

hsp

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