

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10221 of 2015
and
Criminal Misc. No.A-518-MA of 2015

.....

Date of decision:26.5.2017

Balwant Singh

...Applicant

v.

Dharamvir Sharma

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sumit Gupta, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.10221 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 18 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-518-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Dharamvir Sharma for grant of leave to appeal against the judgment dated 5.12.2014 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the complaint filed

under Section 138 read with Section 142 Section of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') has been dismissed and the accused has been acquitted of the charge as framed against him.

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 impugned judgment suffers from illegality and irregularity and thus the same deserves to be set aside. The trial Court has not taken into consideration the law applicable to the facts of the present case and thus caused great injustice to the applicant. 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.

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

From the record, I find that Balwant Singh-complainant filed complaint against Dharamvir Sharma under Section 138 read with Section 142 of the Act. The brief facts of the complaint are that the complainant and accused were real brothers. The complainant was running a shop of repair of tractors where from he also used to carry out the business of sale and purchase of tractors. In the month of November 2010, the accused approached the complainant to borrow an amount of ₹20 Lakhs to purchase a plot. At that point of time, the complainant had sold his land situated in Village Amritpur, District Karnal and as such he was in a position to lend

such a huge amount to the accused. Accordingly, acceding to his request, the complainant lent an amount of ₹20 Lakhs to the accused. In discharge of this liability, the accused issued a post-dated cheque No.662306 dated 30.4.2011 for ₹20 Lakhs drawn at Punjab National Bank, Branch Nilokheri, which on presentation was returned unpaid with the remarks “Insufficient funds”. Legal notice was given to the accused and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Karnal, vide judgment dated 5.12.2014 acquitted the accused. Aggrieved from this judgment, the present appeal along with application seeking leave to file appeal has been filed.

A perusal of the record further shows that in the complaint, no specific date has been mentioned when the amount of ₹20 Lakhs has been given. Though the accused is real brother of the complainant, but no security document has been taken at the time of giving huge amount of ₹20 Lakhs to the accused. No document has been produced on the record to show this transaction. No bank record has been placed on record to show that such a huge amount has been withdrawn from the bank. Though the complainant has stated in the complaint that he had sold the land, but no sale deed has been placed on the record to show the capacity. Further, the accused has raised a probable defence which is duly supported by the DWs that the complainant purchased his 1/5th share in the joint land and as such was required to pay an amount of ₹8 Lakhs to him. The complainant issued a cheque in discharge of the said liability which was dishonoured and a

complaint was filed by the accused against the complainant. It is stated that to pressurize the accused, the complainant misused the cheque in question to file a false complaint against him. The case of the accused is that he never borrowed an amount of ₹20 Lakhs. The Court below from the evidence on record held that there is doubt about the capacity of the complainant. Further no document on record to support the transaction has been placed. The defence raised by the accused has been corroborated by the defence evidence and from the case of the complainant. No bank record, sale deed nor any security document of any type etc. has been produced on record. Otherwise also, it looks unnatural that when the complainant himself had given the cheque of ₹8 Lakhs to the accused and complaint has been filed by the accused against the complainant for dishonouring of that cheque, then the complainant will lend a huge amount of ₹20 Lakhs without taking any security document. The findings given by the learned Judicial Magistrate Ist Class, Karnal, are correct as per evidence and law. In no way, these findings 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.

Therefore, from the above, I find that the findings given by the learned trial Court are correct as per evidence and law which do not require any interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal

miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

May 26, 2017.

(Inderjit Singh)
Judge

hsp

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