

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-643-MA of 2014

.....

Date of decision:11.5.2017

Narender Pal

...Applicant

v.

M/s Bengar Travels Company Ltd. and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. P.R. Yadav, Advocate for the applicant.

Mr. Sandeep Gahlawat, Advocate for respondents No.1 and 2.

Mr. Kuldeep Sharma, Deputy Advocate General, Haryana
for respondent No.3-State.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against M/s Bengar Travels Company Ltd. and others for grant of leave to appeal against the judgment dated 18.2.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') read with Section 420 IPC has been partly allowed and it has been ordered that the accused company will pay an amount of ₹10,55,000/- equivalent to the cheque amount to the complainant so as to compensate the complainant for

the harassment which he had suffered on account of the dishonour of the cheque in question. However, vide separate order dated 18.2.2014 accused Tek Ram has been acquitted of the charge under Section 138 of the NI Act.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the impugned judgment which is likely to succeed as per grounds mentioned therein. It has been stated that the learned trial Court wrongly acquitted respondent No.2-Tek Ram and thus a great injustice has been caused to the applicant-appellant. It has been stated that in case leave to file the accompanying appeal is not granted, the applicant-appellant would suffer an irreparable loss and injury. 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 has been issued in this case.

Mr. Sandeep Gahlawat, learned Advocate has put in appearance on behalf of the respondents No.1 and 2 and Mr. Kuldeep Sharma, learned Deputy Advocate General, Haryana has appeared for respondent No.3-State and contested this application.

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

From the record, I find that Narender Pal-complainant filed complaint against M/s Bengar Travels Company Ltd., Jagjeet Singh and Tek Ram-respondents/accused under Sections 138, 141 and 142 of the Act read with Section 420 IPC. The brief facts of the case are that accused had

borrowed a sum of ₹10,55,000/- from the complainant for the improvement of their business as accused are running a business under the name of M/s Banger Travels, Branch Office at Gandhi Colony, Sector 39, Gurgaon and the accused had agreed to repay the loan amount within two months. Believing upon the representation of the accused and considering the friendly relations between them, the complainant advanced a sum of ₹10,55,000/- to the accused as a friendly loan. The accused failed to repay the loan amount in stipulated period of two months despite repeated requests and demands on the part of the complainant. Later on towards discharge of the above said legal liability the accused issued and delivered cheque No.200170 dated 24.3.2012 drawn on HDFC Bank, Gurgaon for ₹10,55,000/-, which on presentation was returned unpaid with the remarks “Insufficient Funds”. Legal notice was issued and when the amount was not paid the complaint was filed.

During the pendency of the trial, accused-Jagjeet Singh died and the proceedings abated against him. The statement of the accused-Tek Ram under Section 313 Cr.P.C was recorded where he had taken the plea of false implication. In his defence, the accused examined DW-1 Karan Singh and DW-2 Vikas Kumar, Personal Manager HDFC Bank and documents were also tendered.

The learned Judicial Magistrate Ist Class, Gurgaon, vide judgment dated 18.2.2014 acquitted accused Tek Ram and convicted the firm M/s Bengal Travel Company and accordingly compensation of ₹10,55,000/-, which was the cheque amount, was awarded.

A perusal of the judgment passed by the Court below shows that the findings have been given as per evidence and law and do not require any interference from this Court. 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. There is no mention that accused Tek Ram was in-charge of the respondent Company and was responsible for the business and affairs of the company. The cheque has been issued by accused-Jagjit Singh, who had already died. There is no averment in the complaint that Tek Ram was also responsible for the day to day business of the Company. The Director can only be held as liable as per settled law if he is actively doing and taking part in the business of the company and this fact is to be specifically pleaded in the complaint. Rather, the complainant states that loan was advanced by him as there were friendly relations between the accused and the complainant. There is no mention that the accused Company or other Director Tek Ram had taken the loan or the fact that the said loan was taken on behalf of the company. It bears the signatures of accused Jagjit Singh, who has already died and the proceedings qua him had been abated during the pendency of complaint. The entire transaction of loan was entered into by accused Jagjeet Singh (now deceased) as is also clear from documents Ex.P.7 and P.8 and also cheque Ex.P.1 which bears the signatures of accused Jagjit Singh only and from other documents placed on record. Documents Ex.P.7 and Ex.P8 have not been executed by Tek Ram and signatures of Tek Ram are not there on the writing.

The learned Judicial Magistrate Ist Class, Gurgaon, also found from the evidence that there is no proof of any type that any Board resolution, which could have authorised Jagjit Singh to enter into any such transaction binding upon other Directors of the company, or any such record has been placed on record. The Court below further held that the complainant has sought to make accused Tek Ram vicariously liable for all acts, omissions and commissions on the part of the Company, it was essential for him to adduce any evidence or document of the accused Company authorizing accused Jagjeet Singh to enter into any such transaction binding all Directors of the Company. The Court below further held that entire transaction of loan was entered into by accused Jagjeet Singh (now deceased) as also clear from documents Exs.P.7 and P.8 and also cheque Ex.P.1 bears the signatures of accused Jagjeet Singh, who was at the helm of the affairs of the company. The trial Court also stated that in the complaint even it is not mentioned that Tek Ram was the in-charge or was responsible for the affairs of the Company.

A perusal of these findings shows that these are correct as per evidence and law and accused Tek Ram has been rightly acquitted by the Court below. Therefore, no ground is made out for grant of leave to appeal regarding acquittal of Tek Ram in this case.

Learned counsel for the applicant further argued that the compensation granted by the trial Court qua the cheque amount is inadequate. A perusal of the record shows that the trial Court has granted the compensation of ₹10,55,000/- payable by the Company which was the

cheque amount and, in no way, this compensation can be held as inadequate.

On this ground also, there is no merit in the application.

Therefore, from the above discussion, I find no merit in this application and the same is dismissed.

May 11, 2017.

(Inderjit Singh)
Judge

hsp

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