

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-751-MA of 2015 (O&M)

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Date of decision:18.1.2017

Dr. Kuldip Singh

...Applicant

v.

Mandeep Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kawaljyot Singh, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Mandeep Singh for grant of leave to appeal against the judgment dated 4.2.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

It has been mainly stated in the application that the learned Judicial Magistrate Ist Class, Jalandhar, vide judgment dated 4.2.2015 while acquitting the accused-respondent of charge under Section 138 of the Act has committed grave illegality, which has resulted in the miscarriage of justice. The findings of the learned Judicial Magistrate Ist Class, Jalandhar, are perverse. The complainant has been cheated and illegally deprived of

his rightful legal right by the accused. It has, therefore, been prayed that leave to appeal may be granted.

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

From the record, I find that Dr. Kuldip Singh-complainant filed complaint under Section 138 of the NI Act against Mandeep Singh. It has been stated in the complaint that in order to discharge his legal enforceable liability, the accused had issued a cheque bearing No.583608 dated 18.4.2011 for ₹65,000/- in favour of the complainant with the assurance that the same would be honoured on presentation. On its presentation, the said cheque was returned back dishonoured with the remarks “funds insufficient & cheque not entered in system”. Legal notice dated 11.8.2011 was issued to the accused. When the payment was not made within the stipulated period, the complaint was filed within statutory period.

The complainant examined himself as CW-1 and tendered into evidence his duly sworn affidavit Ex.CW.1/A and proved on record documents, i.e., original cheque as Ex.C.1, original memo as Ex.C.2, copy of legal notice as Ex.C.3 and postal receipt Ex.C.4.

The accused in his statement recorded under Section 313 Cr.P.C. stated that he has no legally enforceable financial liability towards the complainant. In fact, he along with complainant had started a firm Satguru Traders being 33% (1/3rd partner). He had further pleaded that complainant was a close friend of one Rajesh Puri, who along with his wife was having a firm M/s Zeus Biotech and was dealing in medicines. The

complainant insisted him to buy medicines from M/s Zeus Biotech through their firm Satguru Traders and in order to buy medicines, he had given two cheques as security to said Rajesh Puri, but later on, it was discovered by him that Rajesh Puri through his firm M/s Zeus Biotech used to sell medicines to him and his firm at inflated rates and when he lodged protest against the same, said Rajesh Puri presented the cheque in question through the complainant to put pressure upon him to falsely implicate him. The complainant had also dissolved partnership with him from Satguru Traders and all the accounts among the partners qua Satguru Traders were already settled.

The accused also examined himself as DW-1 and Rajinder Kumar, Additional Ahlmad, who had produced on record certified copy of complaint as Ex.DW.1/A filed by accused against the complainant and above said Rajesh Puri for the offences punishable under Sections 3 and 4 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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

I have gone through the record specially the judgment passed by the learned Judicial Magistrate Ist Class, Jalandhar. The learned trial Court appreciated the evidence in right perspective. In no way, the findings can be held as perverse. 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 nothing on the record as to which findings are against evidence or law.

First of all, the complainant has not mentioned any date, month or year when the liability was created against the accused. There is nothing whether the amount had been borrowed or it was what type of liability. There are no particulars in the complaint in whose presence and at what place, whether in cash or by way of cheque the amount had been given to the accused. There is also nothing as to whether this amount had been borrowed or relates to some business transaction etc. There is no document on record to show this transaction. No receipt or any document had been got executed while giving ₹65,000/- to the accused etc. All these facts rebut the presumption under Section 139 of the NI Act. The complainant in his cross-examination admitted regarding his partnership with the accused. But he had shown ignorance whether Satguru Traders used to purchase medicines from M/s Zeus Biotech or not. All these facts support and corroborate the defence version. The defence version given by the accused is probable one and rebuts the presumption under Section 139 of the NI Act.

In view of the above discussed facts, I find that the accused has been rightly acquitted by the learned Judicial Magistrate Ist Class, Jalandhar, vide judgment dated 4.2.2015. The findings given by the learned Court below are correct as per evidence and law and do not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal.

Hence, finding no merit in the criminal miscellaneous application under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

January 18, 2017. **(Inderjit Singh)**
Judge

hsp

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