In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.50422 of 2013

and

Criminal Misc. No.A-1097-MA of 2013

.....

Date of decision:31.10.2018

Lovnesh Goyal

...Applicant

v.

Lalit Jain and others

...Respondents

....

(2) Criminal Misc. No.50619 of 2013

and

Criminal Misc. No.A-1110-MA of 2013

.....

Lovnesh Goyal

...Applicant

v.

Lalit Jain and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

Mr. Sandeep S. Majithia, Advocate for respondent No.1.

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Inderjit Singh, J.

Cr. Misc. Nos.50422 and 50619 of 2013:

For the reasons mentioned in the applications, the delay of 12 and 17 days respectively in filing the appeals and applications seeking leave to appeal is condoned.

The criminal miscellaneous applications stand allowed.

Cr. Misc. Nos.A-1097-MA and A-1110-MA of 2013:

This order will dispose of the above mentioned two criminal miscellaneous applications seeking leave to file appeals. The complainant/ applicant has filed these criminal miscellaneous applications under Section 378(4) Cr.P.C. against Lalit Jain, Kimti Lal Jain and Bal Krishan Jain for grant of leave to appeal against the impugned judgments dated 26.8.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act') have been dismissed and the accused have been acquitted of the charges as framed against them.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that the learned trial Court has fell into the error that the complainant/applicant was not able to prove the legal liability of the accused persons towards the complainant, therefore, the reasoning given by the learned trial Court for acquitting the accused persons is perverse against the settled provisions of law and liable to be set aside. It has, therefore, been prayed that these applications seeking leave to file appeal be allowed and leave be granted to the applicant to file appeals.

The brief facts in both the cases are that the complainant is the whole sale dealer of the lady suits and runs his business under the name and style of M/s S.A. Zari Arts and accused No.1 to 3 running their business under the name and style of Jain Cloth House. It has been submitted that on 9.8.2007, the accused purchased lady suits for ₹3,85,550/- from the complainant vide bill No.2151 and in discharge of part legal liability, they had issued cheque No.004941 dated 10.10.2007 for ₹3 Lakhs.

In the other case, it has been submitted that the accused firm had been purchasing lady suits from time to time and had been making the payment on various occasion. In partly discharge of their legal liability, they had issued cheque No.450980 dated 10.12.2007 for ₹4 Lakhs. When these cheques were presented for encashment, these were returned back with the remarks "funds insufficient". Legal notices were given. When the amount was not paid, the complaints were filed.

Sarjiwan Kumar-complainant during the pendency of the proceedings died and his LR has been impleaded as complainant. Lovnesh Goyal stepped into the witness box as CW-1 and tendered in evidence his duly sworn affidavit Ex.CW.1/A. He also got examined CW-2 Sujatinder Singh, Manager, J&K Bank, Phagwara, who produced Ex.C.9 cheque returning register of the cheque in dispute and Ex.C.10 which is the statement of account.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. and they were confronted with the evidence of the complainant, but they denied the correctness of the same and pleaded themselves as innocent. The accused also took the plea that false and frivolous complaints have been filed by Sarjiwan Kumar-father of the complainant on the basis of forged and fabricated documents and he has not purchased any suits from M/s S.A. Zari Arts. Ex.C.1 and Ex.C.8 do not bear his signatures and these are forged one. It has been stated that the complainant not only forged and fabricated documents before filing of the complaints but, they have also tampered with the documents during the trial. The accounts books produced by the complainant are also forged and fabricated documents and these have been prepared during the pendency of the trial. In his defence evidence, the accused also got examined DW-1 Ashwani Kumar, who is working as Accountant with the accused, who also stated in his evidence that he used to maintain the account of the accused and as per record there was no liability reflected in the account books as well as in the income-tax record towards M/s S.A. Zari Arts. Even in the account books of the accused no dealing of the accused with the complainant is reflected.

The learned Judicial Magistrate Ist Class, Ludhiana, vide impugned judgment dated 26.8.2013 acquitted the accused. Aggrieved from the said judgment, the present appeal along with applications seeking leave to file appeal have been filed by the complainant.

Notice of motion was issued in these cases.

Mr. Sandeep S. Majithia, learned Advocate has appeared on behalf of the respondent No.1 and contested these applications.

I have heard learned counsel for the applicant as well as learned counsel for respondent No.1 and have gone through the record.

A perusal of the record shows that the entries in the record of the complainant are fabricated. CW-1 complainant was confronted with the entries reflecting at Point-A in Ex.D.1, but the same were not found on the document Ex.D.24. The Court below held that one thing has emerged out that the amount of ₹3,41,595/-, which was shown at point-A in Ex.D.1, has not been reflected in document Ex.D.24 at the same place. There are cuttings and additions of entries in the record. Bills No.2151, 2152 and 2153 with the total amount as reflected in Ex.D.1 are not tallying with the total sum at the end of the account which clearly shows that this amount has been inserted in between the entries and the serial number has been disturbed. Except these three entries to bill numbers the account book shows that serial number is correct upto Bill No.2111 and after inserting these entries between the entries of bill No.2111 and 2112, and continuously in that manner which itself shows that the account book has been forged by the complainant. It is settled law that if any party ask for the relief on the basis of forged documents, no relief can be granted to that party.

Keeping in view the above facts, I find that the findings given by the learned trial Court in these cases are correct as per evidence and law. The findings cannot be held as perverse or against the evidence. Nothing has been pointed out as to how the findings are 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 to show that the findings are against the evidence or law. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeals. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same are dismissed.

As main cases stand decided, therefore, criminal miscellaneous application, if any, also stands disposed of.

October 31, 2018. **(Inderjit Singh)**
Judge

hsp

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