

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-542-MA of 2013 (O&M)

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Date of decision:27.7.2018

Parminder Singh

...Applicant

v.

Gurjant Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vikram Preet Arora, Advocate for the applicant.

Mr. Pankaj Bali, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Gurjant Singh for grant of leave to appeal challenging the judgment dated 17.5.2013 passed by learned Sub Divisional Judicial Magistrate, Khanna, vide which the complaint filed under Section 138 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 if the application is not allowed then the applicant would

suffer an irreparable loss. 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 Parminder Singh-complainant filed a complaint against Gurjant Singh under Section 138 of the Act. As per the averments in the complaint, accused borrowed ₹80,000/- from the complainant on 7.7.2010. In order to discharge legally enforceable debt, the accused issued cheque No.0219233 dated 3.3.2011 which on presentation for encashment by the complainant before his bank returned back with the remarks “insufficient funds”. The complainant served legal notice upon the accused. Despite receiving legal notice, the payment was not made, hence the complaint was filed.

The complainant examined Rajinderpal and Sunil Kumar CWs.

At the close of evidence, the statement of the accused under Section 313 Cr.P.C. was recorded by putting incriminating circumstances appearing against him and he was confronted with the evidence, who denied the correctness of the evidence and pleaded himself as innocent. The accused examined DW-1 Daya Ram.

The learned trial Court after appreciating the evidence on record, acquitted the accused of the charge as framed against him.

I have gone through the record and find that the accused had taken the defence that he neither borrowed any money nor issued the cheque

in question to the complainant to discharge the liability. It is also the case of the accused that two cheques including the cheque in question were lost from him regarding which, his banker was timely intimated vide letter dated 17.11.2010 Ex.D.1 to stop the payment. A perusal of the record shows that the accused has duly proved the application Ex.D.1 dated 17.11.2010 by bringing the witness to the witness box. This letter was moved on 17.11.2010 regarding the loss of two cheques including the present one, but the complainant states that the cheque was issued on 3.3.2011 i.e. after about four months of reporting the matter to the banker that the cheques had been lost. Further more, this probable defence raised by the accused is supported and corroborated from the fact that there is no document on record to show the loan transaction. Neither any security document had been obtained at the time of advancing the loan nor any particulars had been given regarding this loan transaction whether it was given by cheque or cash and at which place and in whose presence. To rebut the presumption under Section 139 of the NI Act, the accused is only to raise a probable defence. In the present case, a probable defence has been raised by the accused by way of letter dated 17.11.2010 Ex.D.1 given to the banker to stop the payment showing that before the issuance date of the cheque four months earlier the accused had informed the banker regarding the loss of the cheque and requested for stopping the payment.

Therefore, from the above, I find that the findings given by the learned Sub Divisional Judicial Magistrate, Khanna, are correct as per law. The evidence has been appreciated in right perspective. 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.

From the record, I find that the findings have been given after correctly appreciating the evidence. 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.

July 27, 2018.

(Inderjit Singh)
Judge

hsp

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