

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.21290 of 2018
and
Criminal Misc. No.A-1078-MA of 2018

.....

Date of decision:5.12.2018

Sahun Khan

...Applicant

v.

Usman

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Munfaid Khan, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.21290 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 20 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1078-MA of 2018:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Usman for grant of leave to appeal against the impugned judgment dated 15.2.2018 passed by learned Chief Judicial Magistrate, Nuh, 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 charges 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 learned trial Court vide impugned order has caused a great loss to the applicant due to non-application of judicial mind. It has been stated that while passing the impugned order, the learned trial Court has not considered the facts and circumstances of the present lis and law points applicable thereto. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

The brief facts of the case are that the complainant being a building material supplier, supplied building material to accused for ₹29,69,980/- regarding which the accused promised to pay its price within 15 days but failed to do so. On being asked to make the payment, the accused issued cheque No.747957 dated 10.9.2013 for the said amount. The complainant presented the cheque for encashment in the bank which was returned back with the remarks “funds insufficient”. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and tendered cheque in question Ex.C.1, bank memo Ex.2, legal notice Ex.C.3 and postal receipt Ex.C.4. He also examined CW-2 Surinder Pal Rathi, Clerk, Bank of India, Sohna, who deposed that cheque Ex.C.1 was of their bank and was dishonoured due to insufficient funds in the account. He tendered the account statement Ex.CW2/A. The complainant further examined Farooq Ahmad, Clerk of Sh. M.U. Hasan, Advocate, who drafted legal notice

Ex.CW.3. He identified his signatures thereon. CW-4 Pawan Kumar, Assistant Manager, HDFC, Nuh proved the account statement EX.CW.4/A.

At the close of complainant's evidence, accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. The accused/respondent denied that he had issued the cheque in question in favour of the complainant. The accused stated that complainant's real sister (Basina alias Bassi) was married to his relative Javed, but in 2013, a family dispute arose between Basina and their family and thereafter, Basina left the house and started living in Village Bai. He further pleaded that in 2013, a panchayat was convened in Village Bai where he along with his family members and others went, but complainant etc. quarrelled with them, their vehicle was damaged and some documents were taken away from their vehicle, which included his cheque book. Thereafter, the complainant misused the cheque and filed a false complaint. He claimed that he as well as the complainant were agriculturists and never did the work of building material. He examined himself as DW-1 and testified through his affidavit Ex.DW.1/A to the effect that he was an illiterate agriculturist and merely knew how to sign. He examined DW-2 Hakam and DW-3 Abdulla and DW-4 Khalid, Clerk, Gurgaon Central Co-operative Bank, Nuh.

The learned Chief Judicial Magistrate, Nuh, vide impugned judgment dated 15.2.2018 after appreciating the evidence acquitted the accused. Aggrieved from the said judgment, the present appeal along with

application seeking leave to file appeal has been filed by the complainant.

I have heard learned counsel for the applicant and have gone through the record specially the judgment passed by the learned trial Court.

From the record, I find that the findings have been given by the trial Court after appreciating the evidence in right perspective. In no way, the findings can be held as perverse. 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. Further from the record, I find that in the present case no date, month or year has been mentioned as to when the material was supplied. There is also no date as to when the amount was demanded back. No security document or receipt has been obtained. No particulars have been given in the complaint regarding the liability. There is no document on record to show this transaction. The complainant, who allegedly supplied the building material to the amount of about ₹30 Lakhs might have been maintaining the accounts but he has not produced the account. There is no bill of any type etc. vide which the material has been supplied. The accused has denied receiving of the material from the complainant. He also denied that he has issued the cheque for discharge of any liability.

Keeping in view the facts and circumstances of the present case, I find that as there is no document on record to show this loan transaction and no particulars have been mentioned regarding the liability, therefore, the case of the complainant is covered by the law laid down by

the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028.

Furthermore, there is nothing on the record to show that vide which vehicle this building material was transported. The source of income of the complainant was also not disclosed. The complainant admitted that he used to file income-tax returns of ₹2 Lakhs, ₹3 Lakhs per annum. The fact regarding relationship of the complainant with the accused and the marriage of his sister to one relative of the accused and matrimonial dispute are not contested.

Keeping in view the above facts, I find that the defence raised by the accused is probable one which is duly corroborated and supported by the defence version and the case of the complainant itself. The presumption under Section 139 of the NI Act has been duly rebutted in this case.

Therefore, from the above, I find that the findings have been given by the learned trial Court 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 appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

December 5, 2018.

(Inderjit Singh)
Judge

hsp

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