

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.42137 of 2013
and
Criminal Misc. No.A-814-MA of 2013

.....

Date of decision:15.11.2018

M/s Sonu Auto Mobiles

...Applicant

v.

Gurmail Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Divjyot Singh Sandhu, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.42137 of 2013:

For the reasons mentioned in the criminal miscellaneous application, the delay of 176 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-814-MA of 2013:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Gurmail Singh for grant of leave to appeal against the impugned judgment dated 19.1.2013 passed by learned Special Judicial Magistrate Ist Class, Kapurthala, 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 has erred in law and on facts while acquitting the accused though the case against the accused-respondent stood very much proved. The acquittal of the accused has resulted in grave miscarriage of justice. 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.

As per the averments made in the complaint, the accused owed a sum of ₹2,10,000/- towards the complainant and in order to discharge his liability the accused issued a cheque bearing No.001411 dated 20.6.2011 for ₹2,10,000/- in favour of the complainant, which on presentation for encashment was returned back with the remarks "insufficient funds". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and closed his evidence.

At the close of complainant's evidence, the 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 further stated that the complainant has filed false complaint against him. He owed no money to the

complainant. He gave the cheque in advance to the complainant, however, he never supplied any cement to him nor the complainant returned the cheque and has been lingering on the matter.

The learned Special Judicial Magistrate Ist Class, Kapurthala, vide impugned judgment dated 19.1.2013 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.

From the record, I find that first of all no date, month or year has been mentioned when this liability arose. There are no other particulars in the complaint regarding this liability. Nothing is there as to how this liability arose, whether goods were sold or amount was given etc. The complainant is a Company and maintaining the account books but it has not produced any bill book, receipt etc. showing the supply of cement to the accused. During cross-examination, the complainant stated that the cheque amount was relating to the payment of cement which was supplied by his firm, but he has neither produced any copy of the bill nor any account book relating to such transaction has been produced. The complainant further admitted that he could not produce any bill of cement which was supplied to the accused nor any other document as a token of receipt of the cement by the accused. He further admitted that he could not produce any bill book also from where it may be ascertained that the complainant was dealing with

the supply of cement to the accused. He further admitted that cheque Ex.C.1 is having different ink on the body of the cheque and the signatures of the accused are in different ink. He further admitted that there is overwriting on the name of the firm on Mark-C.7. The complainant has produced Mark-C photo copy of the ledger. This document has not been proved as per law. Therefore, it cannot be looked into. The defence of the accused is that no cement has been supplied and this cheque has been given in advance as security for payment of the cement. As the complainant has failed to show the supply of cement and himself admitted in cross-examination that he cannot produce any record of bill book etc. or receipt of cement by the accused. This statement in cross-examination supports the defence version that no cement has been supplied. Further more, the complainant has not given any date, month or year as to when the cement has been supplied. There is no particulars of any type regarding the liability. The presumption under Section 139 of the NI Act can be rebutted by the accused by raising probable defence. The defence version raised by the accused in this case is probable one which is duly supported and corroborated by the cross-examination of the complainant itself. From the perusal of the judgment passed by the learned Special Judicial Magistrate Ist Class, Kapurthala, I find that the findings have been given on the basis of evidence and law and the same, in no way, 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. The findings have been given by the Court below after appreciating the evidence in right and proper perspective and the same are as per evidence and law which 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.

November 15, 2018.

(Inderjit Singh)
Judge

hsp

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