

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1231-MA of 2016

.....

Date of decision:30.8.2018

Asha

...Applicant

v.

Shamsher Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Arora, 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 Shamsher Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.5.2016 passed by learned Judicial Magistrate Ist Class, Ferozepur, whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused-respondent has been acquitted of the charge as framed against him.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 9.5.2016 passed by learned learned Judicial Magistrate Ist Class, Ferozepur, which is likely to succeed on the grounds mentioned therein. It has been stated that

all the facts and circumstances of the case did not appear to have been properly appreciated by the learned trial Court while acquitting the respondent in this case. The impugned judgment of acquittal is legally not sustainable and is liable to be set aside in acceptance of the appeal. It has, therefore, been prayed that this application be allowed and special leave to appeal be granted.

From the record, I find that Asha-complainant filed complaint against Shamsher Singh under Section 138 of the NI Act. It has been mainly stated in the complaint that accused had obtained a loan of ₹51,575/- from the complainant and in order to discharge the above said liability, he issued cheque bearing No.985315 dated 20.11.2012 for an amount of ₹51,575/-, which on presentation for enactment returned back with the remarks “insufficient funds”. Legal notice was issued to the accused, but the accused failed to pay the cheque amount within the statutory period, hence the present complaint was filed.

The complainant examined herself as CW-1 and closed her evidence.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the complainant. The accused denied the correctness and pleaded himself as innocent. In defence, he examined DW-1 Kishore alias Ashok Kumar, who mainly stated that Shamsher Singh is a tenant in the shop of the complainant and there is dispute between the complainant and accused regarding the shop which was given on rent to accused by the husband of the

complainant. At the request of the complainant along with her son, he convened a Panchayat to settle the dispute. It has been alleged that it was agreed that accused will pay ₹51,575/- to the complainant in lieu of pending rent and till then, the accused will hand over the cheque as security to him. He stated that as per the Panchayat agreement, the accused handed over the cheque of the same amount to him. He further stated that thereafter, the complainant and her son visited his house and requested him to hand over the above said cheque with the assurance that they would not misuse the same. He further stated that the accused handed over to him a sum of ₹51,575/- to further give the same to the complainant, but the complainant refused to take the agreed amount and threatened the Panchayat members. DW-1 specifically stated that no loan was ever taken by the accused from the complainant and the complaint is false. DW-2 Hemant Kumar, Clerk of Municipal Council, Ferozepur, has brought the summoned record and proved on record copy of tax assessment register as Ex.D-1 to show that the accused is a tenant. DW-3 Vijay Parkash, CTO, Branch Office, Punjab National Bank, Bagdadi Gate and PW-4 Baldev Singh were also examined in defence.

The learned Judicial Magistrate Ist Class, Ferozepur, after appreciating the evidence vide judgment dated 9.5.2016 acquitted the accused. Aggrieved from the impugned judgment, the present appeal along with application seeking leave to appeal has been filed.

Notice of motion was issued to respondent, but he refused to accept the notice and did not appear.

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

After hearing learned counsel for the applicant and after going through the record, I find that the perusal of the findings given by the learned Judicial Magistrate Ist Class, Ferozepur, shows that these are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. Further a perusal of the judgment shows that the complainant has not given date, month or year as to when the loan amount was given. No particulars of any loan transaction had been mentioned in the complaint. No security document, receipt etc. had been obtained at the time of giving the loan. There is no document on the record to show any loan transaction. Further more, it itself looks unnatural that a person will take a loan of ₹51,575/-. The presumption under Section 139 of the NI Act can be rebutted by raising a probable defence which has been duly rebutted from the statements of DW-1 and DW-2, who stated that the accused is tenant in one of the shops owned by the husband of the complainant. Further more, DWI-1 has proved that this cheque was handed over in view of the settlement qua the payment of the rent to the witness which was taken by the complainant on assurance that it will not be misused. The complainant while appearing in the witness box even shown her ignorance regarding the fact that the accused is tenant in one of the shops owned by her husband. Further more, the assessment register also

shows that the accused is tenant in the shop. All this evidence supports and corroborates the probable defence raised by the accused. Therefore, presumption under Section 139 of NI Act has been rebutted. The findings given by the learned trial Court have been given after appreciating the evidence in proper and right perspective. In no way, the findings can be held as perverse. The learned trial Court has given the findings correctly 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.

August 30, 2018.

(Inderjit Singh)
Judge

hsp

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