

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1433-MA of 2018

.....

Date of decision:2.11.2018

Satpal Singh

...Applicant

v.

Manjit Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kamal Narula, 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. (as amended up-to-date) read with Section 372 Cr.P.C. against Manjit Singh for grant of leave to appeal against the impugned judgment dated 23.4.2018 passed by learned Judicial Magistrate Ist Class, Ferozepur, 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 impugned judgment is contrary to law and facts and the

same is not sustainable in the eyes of law. The judgment of acquittal of the accused/respondent under Section 138 of NI Act has caused 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.

The brief facts of the case are that the accused borrowed a sum of ₹8 Lakhs from the complainant in the month of March 2015 for his domestic purpose. In discharge of his liability, the accused issued cheque No.620232 dated 30.5.2015 for ₹8 Lakhs, 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 proved the cheque Ex.C.1, original memo Ex.C.2, legal notice Ex.C.3 and its postal receipt Ex.C.4. The complainant also examined CW-2 R.L. Manik, Senior Manager, PNB, Ferozepur, who brought record of joint account of Gurmej Kaur and accused Manjit Singh and cheque leaf status enquiry and proved the attested copy of the same as Ex.C.5 and Ex.C.6 respectively.

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. He also examined himself as DW-1 and deposed that he does not know the complainant. Rather, his brother-in-law (Jija) knows the complainant and he took some loan from him. He further stated that in lieu of that loan, mother of accused has executed a sale deed in favour of the

accused on 4.4.2016. At that time, the complainant gave assurance that he will withdraw all the cases, but the complainant did not withdraw the present case. The accused is illiterate person. The complainant took accused and his mother to bank and opened their account, but retained their cheque book with him only. Thereafter, the complainant filed 4/5 cases against the accused out of which, three cases have been withdrawn by the complainant and the copies of the orders are Ex.D.1 to Ex.D.3. He also tendered copy of sale deed dated 4.4.2016 as Ex.D.4. The accused also stated that the complainant insulted his mother and one complaint under Section 354 IPC was filed against the complainant.

The learned Judicial Magistrate Ist Class, Ferozepur, vide impugned judgment dated 23.4.2018 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.

From the record, I find that the findings given by the trial Court in the judgment dated 23.4.2018 are correct as per evidence and law. In no way, these findings can be held as perverse or against the evidence and law. 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, I find that in the complaint, it has been simply

stated that the loan of ₹8 Lakhs was advanced to the accused in the month of March 2015. No specific date has been mentioned. No other particulars have been given. No security document had been obtained from the accused. The complainant had also not taken any receipt of the loan. There is no document on record to show the loan transaction. Further, there is no date as to when the loan was demanded back. Furthermore, in the cross-examination, the complainant stated that he does not know Manjit Singh and his family personally. He had stated that he knows them through Balwinder Singh, brother-in-law of the accused. Even if the case of the complainant is taken as it is, then the version of the complainant looks unnatural. Nobody will give such a huge amount of ₹8 Lakhs to a person without knowing him personally and that also without getting any receipt or security document executed from him. Further, it was admitted by the complainant that a sale deed was executed in his favour by the mother of the accused and further three cases were withdrawn by him. All this evidence supports the defence version raised by the accused. The defence raised by the accused is probable one which is duly supported and corroborated from the case of the complainant as well as defence evidence. The presumption under Section 139 of the NI Act has been rebutted by the accused by raising probable defence. 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 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 2, 2018.

(Inderjit Singh)
Judge

hsp

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