

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-154-MA of 2018

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Date of decision:27.11.2018

Raj Kumar (deceased) through LR Jyoti (daughter)

...Applicant

v.

Shivjot Roller Flour Mills and others

...Respondents

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(2) Criminal Misc. No.A-160-MA of 2018

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Raj Kumar (deceased) through LR Jyoti (daughter)

...Applicant

v.

Shivjot Roller Flour Mills and others

...Respondents

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(3) Criminal Misc. No.A-164-MA of 2018

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Raj Kumar (deceased) through LR Jyoti (daughter)

...Applicant

v.

Shivjot Roller Flour Mills and others

...Respondents

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(4) Criminal Misc. No.A-248-MA of 2018

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Raj Kumar (deceased) through LR Jyoti (daughter)

...Applicant

v.

Shivjot Roller Flour Mills and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.K. Khetarpal, Advocate for the applicant.

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Inderjit Singh, J.

This order will dispose of the above mentioned four criminal miscellaneous applications seeking leave to file appeals. The complainant/applicant has filed these criminal miscellaneous applications under Section 378(4) Cr.P.C. against Shivjot Roller Flour Mills and Deepak Kumar-respondents for grant of leave to appeal against the impugned judgments dated 1.11.2017 passed by learned Additional Chief Judicial Magistrate, Pathankot, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') have been dismissed and the accused have been acquitted of the charges as framed against them.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that the accused/respondents have wrongly been acquitted for offence punishable under Section 138 of the NI Act. The judgment of the learned trial Court suffers from illegality and infirmity. It has, therefore, been prayed that these applications seeking leave to file appeal be allowed and leave be granted to the applicant to file appeals.

The brief facts in the cases as noted down by learned Additional Chief Judicial Magistrate, Pathankot, in his judgment dated 1.11.2017 are as under:-

“Brief facts as put forth in the complaint are that accused No.2 and 3 are the partners of Shivjot Roller Flour Mills and having good relations with the complainant. Due to good relations, accused took friendly loan of Rs.2 Lac from him for their financial need in the month of April, 2013 without any interest and assured him to return the same within 2-3 months. In the month of September 2013, the accused took loan of Rs.15 Lac from the complainant and assured him that it will be returned in the next 2-3 months. They in order to discharge their legally enforceable liability towards the complainant issued cheques bearing No.604148 dated 07.06.2014 amounting to Rs.5,00,000/-, No.604149 dated 15.06.2014 amounting to Rs.5,00,000/-, No.604150 dated 27.06.2014 amounting to Rs.7,00,000/- drawn on Indian Overseas Bank, Pathankot. On presentation for encashment, these were dishonoured. The complainant approached the accused for payment of cheques amount, who asked for another period of about one year for its return as being in hardship of money. In the month of May 2015, they took back the aforesaid dishonoured cheques and in order to discharge their legally enforceable liability towards the complainant issued cheques bearing No.604166 dated 20.05.2015 for an amount of Rs.5 Lac, No.604167 dated 20.05.2015 amounting to Rs.5 Lac, No.604168 dated 21.05.2015 of Rs.2 Lac and No.604164 dated 21.05.2015

amounting to Rs.5 Lac drawn on Indian Overseas Bank Pathankot. When the cheque bearing No.604164 dated 21.05.2015 amounting to Rs.5,00,000/- was presented to encashment, the same was returned with memo dated 25.05.2015 having remarks "Exceeds Arrangement". A legal notice was served upon the accused, which was duly received. But they failed to make payment of the amount of cheque in question. Hence this complaint."

During the pendency of the proceedings, accused No.2 Ashok Kumar expired and proceedings against him were abated. During the pendency of the case, Ms. Jyoti daughter of the complainant stepped into the witness box as CW-1 and deposed in support of her pleas taken in the complaint. She also examined Tilak Raj, Deputy Manager, Indian Overseas Bank as CW-2 and closed her evidence.

At the close of the complainant's evidence, statement of accused Deepak Kumar was recorded 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 denied that he never availed any loan of ₹15 Lakhs from complainant Raj Kumar nor he met him at any stage. He did not have any friendly relations with him. He did not take ₹2 Lakhs for his financial need in the month of August 2013. He never issued any cheque in favour of complainant Raj Kumar (since deceased). Jyoti is not the daughter of Raj Kumar (deceased). He also pleaded that in the year 2015, he was not partner of the firm M/s

Shivjot Roller Flour Mills. In the year 2014, new firm was constituted in which Kiran Bala w/o Late Ashok Kumar and Ashok Kumar had become partners and had taken all assets and liabilities of the old firm. Raj Kumar during his life time was not having sufficient funds to the tune of ₹20 Lakhs. He did not avail any amount from complainant-Raj Kumar (deceased) in his personal capacity as friendly loan. He also stated that Ashok Kumar (deceased) in the month of April-May, 2015 remained hospitalized at DMC, Ludhiana and Amritsar and remained lying on ventilator and was not in senses. He also opted to lead defence evidence.

In defence, accused examined Veena Devi, Registration Clerk office of Sub Registrar, Nurbur as DW-1, who proved copy of partnership deed dated 15.07.2014 Ex.D.1. Ashok Kumar, Record Clerk, Deep Kidney Care Centre Hospital, Ludhiana DW-2 has proved record of admission and discharge of Ashok Kumar Ex.DW.2/A, attested copy of treatment record from 12.05.2015 to 16.05.2015 Ex.DW.2/B, attested copy of original OPD dated 21.05.2015 Ex.DW.2/C and attested copy of record of first following after discharge Ex.DW.2/D.

The learned Additional Chief Judicial Magistrate, Pathankot, vide impugned judgments dated 1.11.2017 acquitted the accused. Aggrieved from the said judgments, the present appeals along with applications seeking leave to file appeals have been filed by the complainant.

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

First of all, as per DW-1 Veena Devi, a partnership deed Ex.D.1 was executed. As per that deed, Deepak Kumar was not partner of M/s Shivjot Roller Flour Mills. When the cheques in question have been issued on 20.5.2015 and 21.5.2015, Deepak Kumar was not the partner of the firm. Furthermore, Ashok Kumar has already died and the proceedings against him were abated. Furthermore, the partnership deed Ex.D.1 shows that Ashok Kumar was having 85% share and Kiran Bala was having 15% share in profits and losses of partnership business. When the cheques were issued, no cause of action arose to the complainant against the accused as at that time Deepak Kumar was not partner in the firm. CW-1 Jyoti, daughter of the complainant appeared as a witness and she in her cross-examination stated that she knows Ashok Kumar and Deepak Kumar accused personally. Raj Kumar was not income-tax payee. She knows about the partnership deed dated 23.11.2011 in which Ashok Kumar, Deepak Kumar accused and one Krishan Lal were the partners of the firm M/s Shivjot Ropller Flour Mills. On 15.7.2014, this partnership firm was dissolved and a new partnership firm was constituted in which Ashok Kumar and his wife Kiran Bala became the partners of the firm. She also deposed that Ashok Kumar was kidney patient and was handicapped. She does not know, if Ashok Kumar accused got a loan from complainant Raj Kumar to the tune of ₹2 Lakhs for his treatment in the year 2014. She admitted that the cheques in question were issued blank to Raj Kumar in the year 2014. She admitted issuance of cheques in question. Kiran Bala continued to remain partner of M/s Shivjot Roller Flour Mills and is liable

to pay all the liabilities. She also deposed that Raj Kumar was not having sufficient funds to the tune of ₹20 Lakhs during his lifetime, volunteered he sold his house during his lifetime and got that amount.

A perusal of the evidence on record firstly shows that no date has been mentioned as to when the loan of ₹2 Lakhs was given. Similarly, no date has been mentioned as to when further loan of ₹15 Lakhs was given by the complainant to the accused. No record of any type has been produced to show this loan transaction. Furthermore, even the record of the firm has not been summoned to show the loan transactions. No date has been mentioned as to when the loan was demanded back. No receipt or security documents are on record to show as to when the loan amount was given to the firm. As per the case of the complainant, the accused is to earn profit by investing that money in the firm. It is not clear by the complainant's case as to how such a huge amount was given to accused firm without any interest. The defence raised by the accused is probable one which is further supported by the cross-examination of Jyoti. Otherwise also, there is nothing in the complaints that this money was given in the presence of Jyoti by complainant Raj Kumar. Raj Kumar has already died. There is no document on record to show the loan transactions. In view of this evidence, I find that the accused has raised probable defence which has been duly supported and corroborated by the defence evidence as well as by the case of the complainant. The presumption under Section 139 of NI Act has been rebutted by the accused by raising probable defence and from the case of the complainant.

The findings given by the learned trial Court in these cases are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. 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. 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 appeals. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same are dismissed.

November 27, 2018.

(Inderjit Singh)
Judge

hsp

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