In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1443-MA of 2016

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Date of decision:16.10.2018

M/s Pahuja Bartan Store

...Applicant

v.

Chhabra Kitchenware & Gift Palace and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rose Gupta, 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 Chhabra Kitchenware & Gift Palace and Sanjay Kumar, Proprietor of Chhabra Kitchenware & Gift Palace for grant of leave to appeal against the impugned judgment dated 10.6.2016 passed by learned Judicial Magistrate Ist Class, Hisar, 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 have been acquitted of the charges as framed against them.

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 order passed by the learned Court below is against the law and facts proved on the file and thus caused a grave miscarriage and injustice. The learned Court below has acted upon conjectures and surmises while dismissing the complaint and has not appreciated the evidence properly. 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 complainant through its proprietor Harish Chander deals in stainless steel, copper aluminium and brass utensils etc. and accused No.1 through accused No.2-Sanjay Kumar purchased various utensils from the complainant on 24.1.2015 vide bill No.2313 of ₹1,61,000/- on credit as the accused were known to the complainant. To discharge this liability, the accused issued three cheques bearing No.008045 dated 27.1.2015 for ₹50,000/-; cheque No.008046 dated 30.1.2015 for ₹50,000/- and cheque No.039047 dated 2.2.2015 for ₹60,000/-. These cheques on presentation were dishonoured with the remarks “exceeds arrangement”. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and Kailash Chander as CW-2 and closed his evidence.

At the close of complainant's evidence, accused No.2 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 has not led any defence evidence.

The complainant's case is that accused No.1 through accused No.2 purchased various utensils from the complainant on 24.1.2015 on credit basis and amount of ₹1,61,450/- was outstanding against the accused and in order to discharge his liability accused No.2 issued three cheques in question.

On the other hand, the case of the accused is that he is an innocent person and has been falsely implicated. The complainant had prepared the false document Ex.C.2, which has not been shown in the sale tax record, whereas, cheques in question along with one other cheque was given by the wife of the accused to the wife of the complainant, at the time of taking ₹9,000/- which was returned and the complaint was filed by misusing the another cheque, which was withdrawn on payment of ₹9,000/- and this cheque has been misused without any liability.

The learned Judicial Magistrate Ist Class, Hisar, vide impugned judgment dated 10.6.2016 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 learned trial Court after appreciating the evidence found that the complainant admitted in cross-examination that he knows the accused since 10-12 years and his wife since 7-8 years. Wife of the accused had visited his house 2-3 years ago being known to his wife. He has also attended two functions in the family of the accused. He lent ₹9,000/- to the wife of accused, but no writing was executed. He has further deposed that Roznamcha Ex.C.3 had been prepared by his Accountant (Munim) Kailash Chander and he could not produce the original record of Ex.C.3, which is in the custody of Accountant. In cross-examination, he admitted that on the bill, signatures of the receiver are not there. It has also been proved on the record that the name of the purchaser is not mentioned on bill Ex.C.2. In view of this cross-examination, the bill Ex.C.2 cannot be connected with the accused. During cross-examination, the complainant admitted that he gave ₹9,000/- to the wife of the accused but no writing was executed at that time. He placed on record statement of account, which is not bearing any stamp of the firm. The complainant has also not brought on record sale tax record in order to prove that this amount was outstanding against the accused against bill Ex.C.2. The complainant further admitted regarding giving of ₹9,000/- to the wife of the accused. Wife of the accused appeared in witness box as DW-1 and has tendered duly sworn affidavit and deposed that she borrowed amount in the sum of ₹9,000/- from the complainant and handed over four blank signed cheques. She also deposed that the complainant had filed the complaint by misusing one cheque for an amount of ₹9,000/-. She appeared in the Court and repaid ₹9,000/- and complaint was withdrawn.

From the perusal of the evidence on record, I find that the defence raised by the accused is probable one which is also duly supported and corroborated by the evidence of the complainant as well as from the defence evidence. As the defence raised by the accused is probable one, therefore, presumption under Section 139 of the NI Act has been duly rebutted by the accused. A perusal of the record shows that the findings given by the trial Court, 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. 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.

October 16, 2018. **(Inderjit Singh)**
Judge

hsp

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