

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-1603-MA of 2016

.....

Date of decision:15.11.2018

Jasvir Singh

...Applicant

v.

Balkar Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Gurmeet Singh Saini, Advocate for the applicant.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Balkar Singh for grant of leave to appeal against the impugned judgment dated 19.7.2016 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, 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 had borrowed a sum of ₹75,000/- from the complainant as loan and in order to discharge his legal liability towards the complainant, the accused issued a

post-dated cheque bearing No.380612 dated 6.1.2014 for a sum of ₹75,000/- drawn on Punjab & Sind Bank, which on presentation for encashment was returned back with the remarks “insufficient funds”. Legal notice was given. When the amount was not paid within the statutory period, 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 also examined himself as DW-1, who deposed that Jora Singh, father of the complainant, had sold his truck to Sukhwant Singh and later on to him and Satwant Singh. During that time, he received an amount of ₹45,000/- from the complainant for the purpose of instalment of the truck and at that time the complainant obtained his two blank cheques for security purpose. In this regard, an affidavit Ex.D.1 was executed. Then father of the complainant sold the same truck to Gursewak Singh for which an FIR under Section 420 IPC has been registered against him. The complainant has misused the blank cheques given to him as security. He also placed on record copy of FIR No.124 registered against Jora Singh Ex.D.2, copy of challan Ex.D.3, copy of charge-sheet Ex.D.4 and copy of complaint Ex.D.5. DW-2 Maurh Singh, Sarpanch of Village Khilchian also deposed that Jora Singh, father of the complainant sold his truck to the accused and one Satwant Singh in his

presence, but later on sold the same to one Gursewak Singh and it is due to this reason, the accused has got registered a case against Jora Singh. DW-3 Jasbir Singh, Clerk of Advocate Jagtar Singh Sandhu proved on the file signatures of Advocate Jagtar Singh Sadhu on legal notice Ex.DW.3/A.

The learned Judicial Magistrate Ist Class, Ferozepur, vide impugned judgment dated 19.7.2016 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.

A perusal of the impugned judgment shows that first of all no date, month or year has been mentioned regarding the liability. There are no particulars in the complaint as to how this liability arose. There is also no document on record to show this transaction. Further no receipt etc. had been taken at the time of advancing the loan. There is no mention as to when the complainant demanded back the loan. There is also nothing as to at which place and in whose presence this amount had been given nor there is anything as to whether the amount was paid in cash or through cheque etc. Secondly, the complainant in cross-examination himself admitted that Balkar Singh had obtained ₹45,000/- from him to pay instalment of the truck purchased by the accused from complainant's father, but he has filed the complaint for a sum of ₹75,000/-. If the amount of ₹45,000/- has been taken by the accused then as to why the cheque of ₹75,000/- has been given

by the accused. There is no averment that this amount has been given on interest etc. If the amount of ₹45,000/- has been borrowed, then as to why the complainant has mentioned that a loan of ₹75,000/- was taken. This cross-examination alone is sufficient to rebut the presumption and supports and corroborates the defence version. The presumption under Section 139 of the NI Act has been rebutted from the case of the complainant himself and also from the defence evidence.

Therefore, from the above discussion, I find that the accused has been rightly acquitted. 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