

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.17357 of 2017
and
Criminal Misc. No.A-1142-MA of 2017

.....

Date of decision:27.11.2018

P.K. Sharma

...Applicant

v.

Mahesh Patel and another

...Respondents

....

(2) Criminal Misc. No.19435 of 2017
and
Criminal Misc. No.A-1312-MA of 2017

.....

P.K. Sharma

...Applicant

v.

Mahesh Patel and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen Mandhan, Advocate for Mr. Pankaj Bali, Advocate
for the applicant.

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Inderjit Singh, J.

Cr. Misc. Nos.17357 and 19435 of 2017:

For the reasons mentioned in the applications, the delay of 22
days in filing the appeals and applications seeking leave to appeal is
condoned.

The criminal miscellaneous applications stand allowed.

Cr. Misc. Nos.A-1142-MA and A-1312-MA of 2017:

This order will dispose of the above mentioned two 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 Mahesh Patel and M/s Patel Engineering Company-respondents for grant of leave to appeal against the impugned judgments dated 15.2.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 learned trial Court has gravely erred in acquitting respondents from the charges despite there being cogent evidence against them. The learned trial Court totally misled the evidence while acquitting the respondents. 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 both the cases are that the complainant advanced an amount of ₹17,00,000/- to the accused on different dates. It is alleged that some amount was transferred in the account of accused and some amount has been paid in cash to the accused. It is alleged that for part

payment of the loan so advanced, the accused after admitting his legal liabilities, issued cheque No.732777 dated 30.5.2014 for ₹5 Lakhs.

In the other case, it has been submitted that the complainant advanced an amount of ₹17 Lakhs to the accused on different dates. It is alleged that the amount was transferred in the account of accused. It is alleged that for part payment of the loan so advanced, the accused after admitting his legal liabilities, issued two cheques No.732754 dated 24.5.2014 for ₹3,50,000/- and cheque No.732752 dated 26.4.2014 for ₹3,00,000/-. When these cheques were presented for encashment, the same were returned back with the remarks "Account closed". Legal notices were given. When the amount was not paid, the complaints were filed.

The complainant examined himself as CW-1 and proved documents original cheque Ex.CW.1, cheque return memo Ex.CW.2, legal notice dated 6.7.2014 and postal receipts Ex.CW.4.

At the close of complainant's evidence, accused No.1 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. In defence, the accused examined Manish, bank official as DW-1 and Satish Sharma, bank official as DW-2. The accused relied upon documents i.e. account statement Ex.D.1 and details of payment Ex.DW.2/A.

The learned Judicial Magistrate Ist Class, Faridabad, vide impugned judgments dated 15.2.2017 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.

From the record, I find that it is settled law that the presumption under Section 139 of the NI Act can be rebutted by the accused by raising a probable defence. In the present cases, the accused No.1 has proved the payment of ₹20,67,000/- made by him to the complainant through cheques. A perusal of the complaints shows that the complainant is stating that he had advanced loan of ₹17 Lakhs to accused on different dates. There is no document on record to show these loan transactions. No date, month or year has been mentioned as to when this amount of ₹17 Lakhs was given to the accused. Even otherwise, this fact regarding receipt of ₹17 Lakhs loan has been admitted by the accused, but he has proved payment of ₹20,67,000/- to the complainant, his wife and son. The case of the accused is that he had borrowed only ₹16,59,000/- from the complainant, his wife and son. After this evidence, the complainant has improved his version by stating that he had advanced ₹37 Lakhs and inadvertently the same has been mentioned in the complaints as ₹17 Lakhs. There is no documents on record to show that ₹37 Lakhs were advanced to the accused. Even in the legal notices, this was not the case of the complainant that the amount of more than ₹20 Lakhs was paid by the accused through cheques to the complainant which has been duly proved by the DWs. The case of the accused is that he had only borrowed an amount of ₹17 Lakhs along with interest. The accused by raising probable defence submitted that he has already paid the amount to

the complainant more than his liability, therefore, there was no existing liability remains to be discharged by the accused to 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 cannot 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