

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.42670 of 2018
and
Criminal Misc. No.A-1175-MA of 2017

.....

Date of decision:6.12.2018

M/s Balkar Singh and sons

...Applicant

v.

Parmjit Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. A.D.S. Sukhija, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.42670 of 2018:

This application has been filed under Section 482 Cr.P.C. with a prayer for modification/recalling of order dated 31.10.2018 (Annexure-A.1) and restoration of Criminal Misc. No.A-1175-MA of 2017 to its original number for its decision on merits.

For the reasons mentioned in the criminal miscellaneous application, the same is allowed and Criminal Misc. No.A-1175-MA of 2017 is restored to its original number.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1175-MA of 2017:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Parmjit Singh for grant of leave to appeal against the impugned judgment dated 28.2.2017 passed by

learned Judicial Magistrate Ist Class, Amritsar, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI 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 of the learned trial Court is contrary to law and facts and the same is not sustainable in the eyes of law. The judgment of acquittal 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.

As per the averments made in the complaint, the accused has taken a friendly loan of ₹5 Lakhs from the complainant and in discharge of his said legal debt and liability he issued one cheque bearing No.655603 dated 16.6.2014 for ₹5 Lakhs, which on presentation for encashment was returned back with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

Complainant Jatinder Singh 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 further stated that the complaint

is false one. The complainant is commission agent and the accused is farmer. The complainant had obtained blank/undated cheques including the cheque in question from the accused when he sold his produce to him as a security in good faith and not in lieu of any legal liability. He has taken the defence that notice Ex.P.4 was never served upon him before filing the present complaint.

In defence, the accused examined Chander Parkash Sidhu, Senior Manager, P.N.B. as DW-1, who deposed from the record pertaining to the saving account in the name of Paramjit Singh. He produced on record original cheque bearing No.655601 dated 23.12.2013 for ₹4 Lakhs bearing the signatures of account holder Paramjit Singh. He placed on record attested copy of said cheque as Ex.D.1. Thereafter, the accused closed his evidence.

The learned Judicial Magistrate Ist Class, Amritsar, vide impugned judgment dated 28.2.2017 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 first of all no date, month or year has been mentioned as to when the loan was given to the accused. No particulars of any type regarding this liability have been mentioned. There is nothing in the complaint that any receipt or security documents were

obtained while lending such a huge amount. Furthermore, there are no particulars, as to at which place or in whose presence or whether this amount has been paid in cash or through cheque etc., have been mentioned. There is no document to show the loan transaction. There is also nothing in the complaint as to when the amount was demanded back. The case is fully covered by the law laid down by the Hon'ble Supreme Court in the judgment in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028.

Further, from the record, I find that the findings in the judgment have been given by the learned trial Court as per evidence and law. The findings given by the trial Court, in no way, can be held as perverse or against 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. The learned trial Court has appreciated the evidence in right and proper perspective. Further from the record, I find that DW-1 Chander Parkash Sidhu, Senior Manager, P.N.B has proved the cheque for ₹4 Lakhs issued from the account of the accused and this amount was got withdrawn by Ratnesh Kumar, Munim (Manager) of the complainant. It is admitted by the complainant in cross-examination that Ratnesh Kumar, Munim used to accompany farmers for withdrawal of amount from the account of farmers. This makes the defence of the accused probable one. The defence of the accused is that the cheque is a security cheque and there is no outstanding loan amount against the accused which is to be repaid to the complainant. Ratnesh Kumar has

signed on the back leaf of the said cheque which shows that this amount of ₹4 Lakhs had been withdrawn by Ratnesh Kumar-Munim of the complainant.

This payment of ₹4 Lakhs by the accused is nowhere shown in the ledger produced by the complainant. Furthermore, the complainant is showing gross total income of ₹8 to ₹9 Lakhs in the Income-tax returns, whereas he has advanced the loan to 67 different persons and the total amount comes to ₹1,34,11,530/- as per list of sundry debtors produced on record by the complainant.

Keeping in view the above facts, I find that no document showing the loan entries having signatures of the accused has been produced. The defence raised by the accused is a probable one which rebuts the presumption under Section 139 of the NI Act. 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.

December 6, 2018.

(Inderjit Singh)
Judge

hsp

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