

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1857-MA of 2016

.....

Date of decision:20.7.2018

Ranbir Singh

...Applicant

v.

Maan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.C. Shahpuri, 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 Maan Singh for grant of leave to appeal challenging the judgment dated 2.8.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 charge as framed against him.

It has been mainly submitted in the application that the applicant has filed 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 learned Judicial Magistrate Ist Class has committed a grave error of law while acquitting the respondent-accused. It has also

been stated that the applicant-appellant will suffer irreparable injustice, in case the leave is not granted by this Court and that by the acquittal of the accused-respondent miscarriage of justice has been done. 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.

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

As per the averments made in the complaint the accused was closely known to the complainant and as the accused was in dire need of money, he had borrowed an amount of ₹3 lakhs from the complainant and promised to return the same after some time. It has been further averred that the accused had failed to repay the amount within stipulated period and then after great persuasion the accused in discharge of his existing liability towards the complainant had issued a cheque bearing No.019049 dated 11.3.2015 in the sum of ₹3 lakhs. When the cheque was presented by him to his banker for encashment, the same was dishonoured with the remarks of “funds insufficient”. The complainant issued legal notice dated 23.5.2015, but the accused failed to make the said payment and accordingly, the complainant filed the complaint.

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

At the close of complainant's evidence, the statement of the accused under Section 313 Cr.P.C. was recorded and he was confronted with the evidence, who denied the correctness of the evidence and pleaded

himself as innocent. He further stated that the complainant had taken a blank signed cheque alongwith blank signed paper as security from him on the pretext of money borrowed by him in the year 2012 from the wife of the complainant. He further stated that he repaid the said amount, but the complainant did not return his blank signed cheque and blank paper and alleged that they have misused the said cheque by filing the present complaint. It has also been stated that the complainant used to advance money to various persons on interest and and he has no cordial relations with the complainant. It is the case of the accused that he had neither borrowed any money in the year 2014 nor he issued the cheque in question in the year 2015 to the complainant. The accused in defence tendered copy of the bank passbook Ex.D.1.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide judgment dated 2.8.2016 acquitted the accused. Aggrieved from this judgment, the present application seeking leave to appeal has been filed by the complainant/applicant.

I have gone through the record and have heard learned counsel for the applicant. A perusal of the record especially, the impugned judgment passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, shows that the findings given by the learned Court below are correct as per evidence and law. In no way, the findings can be held as 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. Nothing has been argued at the time of

arguments, as to how the findings given by the learned Court below are perverse or against the evidence or law.

From the record, I find that the evidence has been appreciated in right and proper perspective. First of all a perusal of the complaint shows that no date or month has been mentioned as to when the amount had been given to the accused. There is no document to show the loan transaction. There are no particulars as to when the amount was given, at which place, in whose presence and by which mode, whether by cheque or by cash. There is also nothing mentioned as to on which date the demand was raised and refund of loan amount has been made. No security document had been obtained at the time of lending such a huge amount. There is also nothing on the record to show as to whether the amount was withdrawn from the bank or not.

A perusal of the findings further shows that the defence of the accused is that he had earlier borrowed money from the wife of the complainant and he has given this cheque and signed papers at that time. The complainant admitted that the accused had earlier borrowed money from his wife and the same was returned. The complainant has stated that he has one signed paper of the accused which the accused had given at the time of giving the cheque in question. These admissions made by the complainant support and corroborate the defence version. There is no averment in the complaint that earlier the accused had taken the money from his wife or has returned the same etc. The presumption under Section 139 of the NI Act can be rebutted by raising probable defence. In the present

case the accused had raised probable defence which is duly supported and corroborated by the statement of the complainant in cross-examination. Further more, as no date or month had been mentioned nor any particulars have been given nor any security document has been got executed by lending such a huge amount, therefore, in such circumstances, the presumption under Section 139 of the NI Act has been duly rebutted by the accused. The accused has been correctly acquitted by the Court below.

From the record, I find that, in no way, the findings can be held as perverse as the same have been given after correctly appreciating the evidence. In view of the above discussion, 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 appeal, the same is dismissed.

July 20, 2018.

(Inderjit Singh)
Judge

hsp

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