

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.34313 of 2016
and
Criminal Misc. No.A-1902-MA of 2016

.....

Date of decision:3.8.2018

Kulwinder Singh

...Applicant

v.

Indermohan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Arora, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.34313 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 131 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-1902-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Indermohan Singh-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 30.3.2016 (wrongly mentioned in the application as 27.1.2015) passed by learned Judicial Magistrate Ist Class,

Jalandhar, whereby 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-respondent has been acquitted of the charge as framed against him.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 30.3.2016 passed by learned Judicial Magistrate Ist Class, Jalandhar, which is likely to succeed on the grounds mentioned therein. It has been stated that learned Judicial Magistrate Ist Class, Jalandhar, has not appreciated the facts and circumstances of the case while acquitting the respondent in this case. The impugned judgment of acquittal is legally not sustainable and is liable to be set aside. Therefore, it has been prayed that this application seeking to leave to file appeal be allowed.

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

From the record, I find that Kulwinder Singh-complainant filed complaint against Indermohan Singh under Section 138 of the NI Act. As per the brief facts of the complaint, the accused-Indermohan Singh, had taken a loan of ₹3,63,000/- from the complainant on 11.2.2010 for his personal needs. In order to discharge his legal liability, accused issued cheque bearing No.159530 dated 10.3.2010 in favour of the complainant which on presentation for encashment was dishonoured with the remarks "insufficient funds". Legal notice was issued. When the amount was not paid, then the complaint was filed.

The complainant examined in evidence himself as CW-1 and proved the cheque Ex.C.1, Ex.C.2 Memo dated 12.3.2010 issued by Bank, Ex.C.3 copy of legal notice and Ex.C.4 Postal receipt. He also examined Opinder Singh, Officer Punjab and Sind Bank, G.T. Road, Jalandhar as CW-2, who proved Ex.CW.1/A i.e. bank account statement of complainant-Kulwinder Singh.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the said evidence against him but he denied the correctness of the evidence and pleaded himself as innocent. He also stated that he had taken a loan of ₹50,000/- from the complainant in January 2009, in the presence of Sh. Amandeep Singh which was repayable with interest @5% per month. The complainant had obtained a blank signed cheque and blank signed stamp paper from him. The complainant demanded the loan amount in April 2009 which was returned with interest in the presence of Amandeep Singh. He deposed that despite request, the complainant failed to return the blank signed cheque and stamp paper. That on 4.10.2009 the complainant alongwith unidentified person broke the wind shield of a car of their guest. The complainant made a threatening call on the same day to the father of the accused that he had broken the glass of the car and on the next date he will deal with him like this. That father of the accused had lodged a complaint with Police on 4.10.2009. That again on 27.10.2009 threatening call was received by sister of the accused and again complaint to DIG Police was made. That complainant had misused the blank signed cheque after committing forgery

and fraud.

In defence the accused examined DW-1 HC Ranjit Singh, P.S. Division No.4, DW-2 Gurpreet Singh, Constable, ACP Central, Commissioner Office, who deposed that application No. 1484-PTD dated 28.10.2009 by Tajinder Pal Singh against Sheru regarding blank cheque and breaking of glass was registered and produced copy of the relevant entry Ex.DW.2/1. DW-3 HC Hardeep Singh deposed that application No.1484-PTD dated 28.10.2009 moved by Tajinder Pal Singh against Kulwinder Singh Sheru was marked to Sh. Balbir Singh, ASI for inquiry which is still pending. He produced the copy of the register Ex.DW.3/1. DW-4 Arvind Sood, Handwriting and Finger Print Expert deposed that the handwriting differs with the handwriting of the body and the date of the cheque. DW-5 HC Pawan Kumar also deposed regarding the application No.1484-PTD dated 28.10.2009. Tajinder Pal Singh also appeared as defence witness and also deposed the same facts.

The learned Judicial Magistrate Ist Class, Jalandhar, after discussing the evidence in the right and proper perspective acquitted the accused/respondent.

A perusal of the record shows that firstly, there is no document to show the loan transaction. There are no particulars at which place and in whose presence the amount was given; whether it was given in cash or through cheque. There is also nothing on record as to when the demand was raised; whether any security document was obtained. From the evidence on the record especially, the defence evidence produced by the respondent-

accused, it is clear that the father of the accused filed a written complaint against the complainant to take action for breaking the glass of the car etc. and which complaint was still pending. When the father of the accused appeared in the Court as defence witness, then the complaint was filed on 28.10.2009 by the complainant and as per complainant's version the loan was given on 11.2.2010 when the relations between complainant and accused families were strained and the complaint was filed against the complainant and that was pending, it is improbable that the complainant will give a loan of ₹3,63,000/- to the accused without even getting any receipt or security document. The presumption under Section 139 of the NI Act can be rebutted by raising probable defence and the accused had raised a probable defence and the presumption was rebutted in view of the defence evidence of the accused.

I have gone through the record and especially the impugned judgment of the learned Judicial Magistrate Ist Class, Jalandhar, and find that the findings given by the learned Judicial Magistrate Ist Class, Jalandhar, are correct as per evidence and law and, in no way, these findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and 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.

Therefore, from the above discussion, the findings given by the learned trial Court are correct as per evidence and law and do not require

any interference from this Court.

Hence, 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.

August 3, 2018.

(Inderjit Singh)
Judge

hsp

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