

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1295-MA of 2017

.....

Date of decision:21.11.2018

Kawaljot Singh alias Kanwaljot Singh

...Applicant

v.

Jaspinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. L.S. Sidhu, Advocate for the applicant.

Mr. Anil Kumar Sharma, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Jaspinder Singh for grant of leave to appeal against the impugned judgment dated 6.5.2017 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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

been stated that the view taken by the learned Court below is totally against the prosecution evidence which was overlooked by the learned trial Court. The learned trial Court has not applied its judicial mind. The appellant shall suffer serious prejudice as such the impugned judgment is liable to be set aside. 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.

The brief facts of the case are that the accused had received ₹1,30,000/- from the complainant. Thereafter, in order to discharge his legal and financial liability, accused issued cheque bearing No.835203 dated 7.3.2015 for ₹1,30,000/-. The cheque 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.

The complainant examined himself as CW-1 and tendered into evidence documents cheque Ex.C.1, memo Ex.C.2, legal notice Ex.C.3 and postal receipt Ex.C.4 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 has taken the defence that the complainant has misused the blank cheque issued as security in favour of mother of the complainant regarding chit fund transactions. It has been further contended that no loan was ever taken from the complainant. Nothing is outstanding against the accused. The accused has lodged complaint against the complainant and his mother before the Police

regarding misuse of cheque in question.

The learned Judicial Magistrate Ist Class, Chandigarh, vide impugned judgment dated 6.5.2017 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.

Notice of motion was issued in this case.

Mr. Anil Kumar Sharma, learned Advocate has appeared on behalf of the respondent and contested this petition.

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

A perusal of the record shows that no date, month or year has been mentioned as to when the loan was advanced by the complainant. There are no particulars regarding this loan transaction. No security document or receipt had been obtained at the time of grant of loan. There is no document on record to show this loan transaction also. There is also nothing as to when the loan was demanded back. There is no document on the record to show the source of this huge amount as to from where this money has come to the complainant; whether he has withdrawn the same from the bank or not. No income-tax record has been placed on record. No record of any type has been produced on the record to show loan transaction. All these facts support the version of the accused that he has not borrowed any amount from the complainant and his blank cheques have been misused by the complainant which were given to his mother as

security for chit fund transactions. The complainant has also failed to prove on record any friendly relation and the family relation with the accused then as to why he will give such a huge amount to the accused to whom he has no acquittance, without any document and without any interest. Furthermore, the complainant admitted in cross-examination that he has filled the body of the cheque in question in his own handwriting which further supports the case of the accused that the blank cheque issued as security in favour of the mother of the complainant regarding chit fund transactions has been misused and filled by the complainant.

A perusal of the evidence on record shows that the defence raised by the accused looks probable one which is duly supported and corroborated by defence evidence as well as from the case of the complainant. The presumption under Section 139 of the NI Act can be rebutted by raising probable defence. In the present case, the defence raised by the accused is probable one as there is nothing on the record to show this loan transaction and the presumption under Section 139 of the NI Act has been rebutted.

Therefore, from above, I find that the findings given by the 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 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 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 21, 2018.

(Inderjit Singh)
Judge

hsp

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