In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-2275-MA of 2016

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Date of decision:11.12.2018

Jaspal Singh

...Applicant

v.

Varinder Kumar

...Respondent

....

(2) Criminal Misc. No.A-1572-MA of 2017

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Jaspal Singh

...Applicant

v.

Varinder Kumar

...Respondent

....

(3) Criminal Misc. No.A-1573-MA of 2017

.....

Jaspal Singh

...Applicant

v.

Varinder Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.S. Sandhu, Advocate for the applicant.

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Inderjit Singh, J.

This order will dispose of the above mentioned three criminal miscellaneous applications seeking leave to file appeals as the complaints are between the same parties and are part of the same transaction. The complainant/applicant has filed these criminal miscellaneous applications under Section 378(4) Cr.P.C. against Varinder Kumar for grant of leave to appeal against the impugned judgments dated 15.9.2016 and 1.5.2017 respectively passed by learned Judicial Magistrate Ist Class, Batala, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act') have been dismissed and the accused has been acquitted of the charges as framed against him.

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 findings of the learned trial Court suffer from patent error of law and being illegal are not sustainable hence liable to be set aside. It has, therefore, been prayed that these applications seeking leave to file appeals be allowed and leave be granted to the applicant to file appeals.

The brief facts in these cases are taken from Criminal Misc. No.A-1572-MA of 2017. Complainant-Jaspal Singh has stated that accused-Varinder Kumar borrowed a sum of ₹1,50,000/- from him and in lieu of that the accused had issued cheque bearing No.694132 dated 1.6.2013 for ₹1,50,000/-, which on presentation for encashment was returned back with the remarks “funds insufficient”. Legal notice was issued. When the amount was not paid during the statutory period, then the complaint was filed.

In Cr. Misc. No.A-1573-MA of 2017, the accused borrowed a sum of ₹1,50,000/- and issued cheque bearing No.694133 dated 30.12.2013 for ₹1,50,000/-, which on presentation for encashment was returned back with the remarks "funds insufficient". Legal notice was issued. When the amount was not paid during the statutory period, then the complaint was filed.

In Cr. Misc. No.A-2275-MA of 2016, the accused borrowed a sum of ₹1,50,000/- and issued cheque bearing No.694131 dated 30.12.2012 for ₹1,50,000/-, which on presentation for encashment was returned back with the remarks "funds insufficient". Legal notice was issued. When the amount was not paid during the statutory period, then the complaint was filed.

The complainant 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 and false implication.

The learned Judicial Magistrate Ist Class, Batala, vide impugned judgments dated 15.9.2016 and 1.5.2017 respectively 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.

The complainant in cross-examination admitted that he has entered into a partnership with the accused and his wife Kavita for the running of brick-kiln under the name and style of M/s Mahendru Bricks Supply Co., Village Mirza Jaan and as per the said partnership deed, he had 25% share and the partnership could not succeed. He has also stated that he has not depicted the amount given to the accused in his Income-tax return. He admitted that he filed three complaints against the accused under Section 138 of the NI Act and all the three cheques were taken from the accused on 1.6.2013 and on the same day, the accused took money from him amounting to ₹1,50,000/- twice and ₹90,000/- and issued the cheques bearing the date 1.6.2013, 30.12.2013 and 1.6.2014. He also stated that he lent the money for the first time in the year 2005 and had taken the cheque from Varinder Kumar as security and the accused did not return the said amount and the cheque was dishonoured on presentation. He further stated that he again took loan in the year 2006 from him and said cheque also dishonoured and the said amount has also not been paid to him. He further stated that he did not lend the money to Varinder Kumar till 2011, but again he gave huge amount of ₹3,90,000/- to the accused in the year 2013 i.e., regarding which the present three cheques were issued. He admitted that no complaint had been filed by him against the accused regarding the dishonour of cheques issued by him in the years 2005 and 2006. He also admitted that he is in possession of one Tata Indigo car bearing registration No.PB18J-3000 registered in the name of Varinder Kumar and he has also stated that the possession of the car was handed over to him against the money he owed towards the complainant. He admitted that he had got recorded one statement Ex.D.1 on 17.2.2016 in which he has admitted that he had taken 6 cheques from Varinder Kumar-accused in his possession. The complainant further admitted that no account book regarding transaction of lending money to the people has been kept by him.

A perusal of the record shows that firstly no date, month or year has been mentioned in the complaints as to when the amount had been advanced by the complainant. It is no where mentioned that the post-dated cheques have been given by the complainant on the same day when he took the loan. There is no document of any type to show the loan transaction. Further, it looks unnatural that when the accused had not returned the money in the years 2005 and 2006 and the cheques have been dishonoured, then as to why the complainant will again lend a huge amount of ₹3,90,000/- to the accused. Furthermore, it also looks unnatural that on the same day the complainant has given the money three times i.e. ₹1,50,000/- twice and ₹90,000/- third time. There is nothing on the record as to why the total amount has not been given at one time and one cheque has not been taken from the accused for the total amount as the transactions of three loan amounts are on the same day and three cheques, as per complainant, have been given on the same day. This amount has not been shown in the Income-tax return nor there is any document to show the loan transactions. There is no date as to when the loan was demanded back. There is also no mention in the complaints regarding giving of post-dated cheques etc. Further, in the statement dated 17.2.2016 Ex.D.1, the complainant admitted that he has taken six cheques from Varinder Kumar. Further, there is no explanation as to how he is keeping the car of the accused with him. All these things show that the version given by the complainant cannot be believed. Furthermore, the complainant has produced one document Mark-CA in which it has been averred by the complainant that ₹12 Lakhs were due towards the accused, but this document has not been proved as per the evidence and law nor it is the case of the complainant that he gave such a huge amount.

Keeping in view the above evidence, I find that the accused has raised a probable defence to show that such type of transactions had not taken place and the defence of the accused is probable one which has been supported and corroborated from the case of the complainant itself. Therefore, the presumption under Section 139 of the NI act has been duly rebutted.

A perusal of the findings shows that these have been given by the learned trial Court after appreciating the evidence in right and proper perspective. In no way, these findings can be held as perverse or against the evidence or 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 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 appeals, the same are dismissed.

December 11, 2018. **(Inderjit Singh)**
Judge

hsp

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