

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1118-MA of 2015

.....

Date of decision:04.10.2018

Diwan Chand

...Applicant

v.

M/s Harman Agricultural Works and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anil Bansal, Advocate for the applicant.

Mr. Kulbhushan Raheja, Advocate for the respondents.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against M/s Harman Agricultural Works and Ranjit Singh for grant of leave to appeal against the impugned judgment dated 19.9.2014 passed by learned Judicial Magistrate Ist Class, Nabha, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') read with Section 420 IPC has been dismissed and the accused have been acquitted of the charges as framed against them.

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 acquittal is against law and evidence on record and is based on the conjectures and surmises, as such is

liable to be set aside. The aforementioned order of acquitting the respondents-accused is contrary to law, facts and evidence proved on record. 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 case, the accused had taken a cash loan of ₹8 Lakhs from the complainant at Nabha and the accused No.2 in discharge of his legal liability issued a cheque bearing No.695562 dated 29.7.2013 for a sum of ₹8 Lakhs. The cheque on presentation for encashment 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 Munish Bhatia as CW-2 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. He further stated that he was in business of Workshop and purchased some material from the complainant for a sum of ₹20,000-30,000. The complainant took his cheque book bearing his signatures on some of the cheques. He had left the business of Workshop for the last 3-4 years. The complainant had misused his blank cheque out of the cheque book retained by him. The cheque book was retained as surety. The accused did not examine any witness in defence and closed his evidence after tendering the documents Ex.D.1 and Ex.D.2 respectively.

The learned Judicial Magistrate Ist Class, Nabha, vide

impugned judgment dated 19.9.2014 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. Kulbhushan Raheja, learned Advocate has appeared on behalf of the respondents and contested this application.

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

A perusal of the judgment shows that the findings cannot be held as perverse or against the evidence. 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.

Further, from the record, I find that there are no particulars of the liability given by the complainant in the complaint. Nothing has been mentioned on which date, in which month or year this loan had been given. There is also nothing in the complaint as to in whose presence and by which mode, whether in cash or through cheque etc., money had been paid. There is also nothing on the record nor mentioned in the complaint that any security document or receipt etc. had been taken at the time of giving such a huge amount. Furthermore, there is also nothing on record from where this amount of ₹8 Lakhs was given, whether it was withdrawn from the Bank or

not. Furthermore, there is no document on the record to show the loan transaction. Even the Income-tax return etc. has not been placed on record to show the transaction between the complainant and the accused. In cross-examination, the complainant stated that he had borrowed the money from one Bahadur Singh and executed a pronote in his favour. Firstly, it looks unnatural that the complainant will borrow the money on the basis of pronote from another person and will hand over the same to the accused without getting executed any document. Furthermore, no pronote in favour of Bahadur Singh had been produced nor Bahadur Singh has been examined as a witness. Further, I find that no date of demand of loan has been mentioned in the present case. All these facts have been appreciated by the learned Court below. A probable defence has been raised which is duly supported and corroborated from the case of the complainant itself. Therefore, the presumption under Section 139 of the NI Act has been rebutted. 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.

October 04, 2018.

(Inderjit Singh)
Judge

hsp

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