

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.7498 of 2016
and
Criminal Misc. No.A-439-MA of 2016

.....

Date of decision:29.8.2018

Mahesh Kumar Sood

...Applicant

v.

Manohar Lal Sood

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Munish Gupta, Advocate for the applicant.

Mr. Onkar Singh, Advocate for the respondent.

.....

Inderjit Singh, J.

Cr. Misc. No.7498 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 154 days in filing the appeal and application seeking leave to appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-439-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Manohar Lal Sood-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 30.7.2015 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, 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 30.7.2015 passed by learned learned Judicial Magistrate Ist Class, Hoshiarpur, which is likely to succeed on the grounds mentioned therein. It has been stated that the judgment of the learned trial Court is based on surmises and conjectures and, therefore, the same is liable to be set aside. It has, therefore, been prayed that this application seeking leave to appeal be allowed.

From the record, I find that Mahesh Kumar Sood-complainant filed complaint against Manohar Lal Sood under Section 138 of the NI Act. As per the averments made in the complaint, accused was the uncle of the complainant and they had joint family partnership in the name of Shankar Dass Sood & Sons. The entire business of the family was distributed in eight firms in which all the family members were partners. After the death of the father of the complainant, a family arrangement was made between the parties in which the complainant was made to give up his share in GURUKIRPA DHARAM KANDA and in SHRI GANESH DHARAM KANDA and in lieu of this share, the accused agreed to pay a sum of ₹15 Lakhs to the complainant. Accordingly, the accused issued a cheque No.851699 dated 23.5.2009 for ₹5 Lakhs as part payment towards the complainant. When the cheque was presented for encashment, it was received back with the remarks "Account Block". Legal notice was then

sent to the accused. As no payment was made, the complaint was filed.

The learned Judicial Magistrate Ist Class, Hoshiarpur, vide judgment dated 30.7.2015 after appreciation of the evidence acquitted the accused. Aggrieved from the impugned judgment, the present appeal along with application seeking leave to appeal has been filed.

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

A perusal of the record especially the impugned judgment shows that the findings have been given by the learned Judicial Magistrate Ist Class, Hoshiarpur, by correctly appreciating the evidence in right perspective. 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 which material evidence has not been considered by the Court below.

A perusal of record shows that no particulars of the family business or shares of the complainant and the accused had been mentioned. Even the date of settlement had not been mentioned in the complaint.

At the time of arguments, it has been admitted that the family settlement has not been proved as per law. It is only placed on the record which cannot be looked into. Further from the record, I find that the complainant during cross-examination took an entire different stance as he deposed that the said cheque was given to his mother, whereas in the complaint it was stated that the cheque was given to him by the accused. The mother of the complainant has not been produced by him. Further, it is

[4]

in the complaint that in the firm Shankar Dass Sood & Sons, the family members are the partners. The cheque in question belongs to the account of Shankar Dass Sood and Sons. The cheque is not from the personal account of accused. The accused is only the partner in Shankar Dass Sood & Sons like the complainant. Therefore, one of the necessary ingredients that the offence under Section 138 of the NI Act is missing that cheque is from the account of the drawer.

Keeping in view the above findings, I find that the judgment passed by the learned Judicial Magistrate Ist Class, Hoshiarpur, acquitting the accused is correct as per evidence and law and the findings have been given after appreciating the evidence in right perspective which do not require any interference from this Court.

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.

August 29, 2018.

(Inderjit Singh)
Judge

hsp

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