

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-475-MA of 2018

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Date of decision:14.11.2018

Sukhdev Singh S/o Kartar Chand

...Applicant

v.

Sukhdev Singh S/o Gurbachan Singh

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ramesh Chand Sharma, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sukhdev Singh S/o Gurbachan Singh for grant of leave to appeal against the impugned judgment dated 5.12.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 learned trial Court did not give a thoughtful consideration to the evidence on record and acquitted the respondent of the

above said charges without applying a judicious mind. The impugned judgment dated 5.12.2017 is not based on correct appreciation of evidence and hence is not sustainable in the eyes of law. 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 complaint, it has been mentioned that the accused is having family relations with the complainant and the accused in order to fulfill his personal requirements took a sum of ₹1 Lakh from the complainant with an assurance that he will return the same within a short span of time. In order to discharge his financial obligation, the accused issued cheque No.468462 dated 21.1.2016 for ₹1 Lakh. On presentation of this cheque for encashment, the same was returned back with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant in preliminary evidence examined himself as CW-1 and tendered his duly sworn affidavit Ex.CA reiterating the facts as mentioned in his complaint. He also tendered cheque Ex.C.1, memo Ex.C.2, notice Ex.C.3 and postal receipt Ex.C.4 and closed his preliminary evidence. In after notice evidence, the complainant examined himself as CW-1.

At the close of complainant's evidence, 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 deposed that he borrowed loan amount of ₹10,000/- only

from the complainant which he has returned. At the time of advancement of loan, he gave blank signed cheque as security purpose as per demand of complainant. Nothing is due from him. The complainant filed the complaint just to grab more money from him with mala fide intention. The debt is time barred and not recoverable as per law. The complainant misused his bank signed cheque which he had given only for security purpose for ₹10,000/- to the complainant, but after returning the loan amount, the complainant never returned the alleged cheque.

In his defence evidence, accused Sukhdev Singh tendered certified copies of complaints filed by the complainant against other persons.

The learned Judicial Magistrate Ist Class, Jalandhar, vide impugned judgment dated 5.12.2017 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.

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

From the record, I find that the findings given by the trial Court are correct as per evidence and law. The evidence has been appreciated in right and proper perspective. In no way, the findings can be held as perverse and against the evidence and 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.

Further, from the perusal of the complaint itself, it is clear that no date, month or year has been mentioned when the amount of ₹1 Lakh was advanced. Secondly, there are no other 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. Further more, no particulars of any type had been mentioned in the complaint that in whose presence and at which place and by which mode, whether by cash or through cheque, the amount had been paid. There is no averments whether this amount was withdrawn from the Bank or not. There is further no document on record of any type to show this loan transaction. There is nothing on record as to whether this loan amount was to be repaid with interest or not. There is nothing on record as to when this amount was demanded back by the complainant. Further more, as per the defence evidence, the complainant has filed complaints against Sumit Arora, Bhanu, Dheeraj Kumar, Kishori Lal and Amandeep Kumar, the copies of which are Ex.D.1 to Ex.D.5. It looks unnatural that the present complainant advancing loan to so many persons is not maintaining any record even a diary. All these transactions cannot be remembered orally. It looks that he is maintaining some type of record but he has not produced the same before the Court. Further more, in this case the complaint has been filed before the expiry of 15 days regarding demand as per the legal notice. The learned Judicial Magistrate Ist Class, Jalandhar, has discussed the law laid down by

the Supreme Court and in that way also this complaint is not maintainable before the expiry of 15 days after giving legal notice.

Therefore, from the above, I find that 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 14, 2018.

(Inderjit Singh)
Judge

hsp

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