

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10642 of 2016
and
Criminal Misc. No.A-612-MA of 2016

.....

Date of decision:24.8.2018

Khadi Sadan through Madan Lal Sharma

...Applicant

v.

Sukhdev Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Khattar, Advocate for Mr. Deepak Sharma, Advocate
for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.10642 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 48 days in filing the application seeking leave to appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-612-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sukhdev Singh and M/s Supar Steel Industries for grant of leave to appeal against the judgment dated 3.12.2015 passed by learned Judicial Magistrate Ist Class, Ambala, vide which 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 No.1 has been acquitted of the charge 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 has gravely erred in acquitting respondent No.1 from the charges despite there being cogent evidence against him. The learned trial Court has totally misread the evidence while acquitting the respondent No.1 and the said judgment has been based on certain authorities which is not applicable in the present case. It has, therefore, been prayed that this application be allowed and the applicant be granted leave to file appeal.

The brief facts of complainant's case are that Madan Lal Sharma is the Secretary of Khadi Sadan, Naya Gaon, Ambala City and the said Khadi Sadan is the registered society under the Registrar of Co-operative Societies under the Societies Registration Act, 1860 (hereinafter referred to as 'the Act') and the said society is working for the benefit of the people to give an employment on no profit no loss. Accused No.1 was the Chairman of the Khadi Sadan and later on Madan Lal Sharma became the Secretary of the said Khadi Sadan and accused No.1 requested him for a sum of ₹4,21,000/- as financial assistance and as per the request of accused No.1, the complainant paid a sum of ₹4,11,394/- on different dates to accused No.1 and the accused assured the complainant that the said amount

will be returned on demand. In the discharge of his financial liability, he issued cheque No.366522 dated 12.4.2013. The said cheque on presentation for enactment was returned back with the remarks “No such account”.

The learned Judicial Magistrate Ist Class, Ambala, vide judgment dated 3.12.2015 acquitted the accused. Aggrieved against the impugned judgment of acquittal, the present appeal along with application seeking leave to file appeal has been filed.

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

From the record, I find that first of all the complainant is Khadi Sadan registered society who had filed the complaint through its Secretary. There is neither any resolution of the Khadi Sadan nor there is any record on the file to show this loan transaction. If Khadi Sadan Society was to give loan to accused No.1-Sukhdev Singh then there might be some record.

The learned counsel for the applicant-complainant argued that Madan Lal Sharma being Secretary had given the loan amount to accused No.1 orally without taking any receipt or any security document and without entering the transaction in the record of the Society. This version of the complainant cannot be believed. Secondly, the Court below held that there is no document on record to show that Madan Lal Sharma was authorised to file the complaint. There is neither any resolution nor any authorisation was given to him to file the complaint. Otherwise also, the Secretary of the Society, in no way, has been authorised to give the loan amount to a private person without getting executed any document, without any written request

or without preparing any record. The defence of the accused is that this cheque had been stolen by the present complainant and has filed the complaint. It is settled law that the presumption under Section 139 of the NI Act can be rebutted from the case of the complainant itself. In the present case, the presumption has been rebutted from the case of the complainant himself. No particulars of any type have been mentioned in the complaint nor any date, month or year has been mentioned as to when the loan was given. There is no security document on the record to show this loan transaction. Further more, as per the memo received from the Bank, no such account had existed. Therefore, from the above discussion, I find that the accused have been rightly acquitted by the Court below.

In no way, the findings given by the learned trial Court can be held as perverse or against the evidence or law. 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.

Keeping in view the findings given by the trial Court, I find that the presumption under Section 139 of the NI Act has been duly rebutted by the accused by raising probable defence which is duly supported and corroborated from the case of the complainant itself.

Therefore, from the above, I find that the findings given by the learned Judicial Magistrate Ist Class, Ambala, are correct as per evidence and law and do not require any interference from this Court.

In view of the above discussion, 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 appeal, the same is dismissed.

August 24, 2018.

(Inderjit Singh)
Judge

hsp

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