In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1592-MA of 2014

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Date of decision:26.9.2018

Naveen Bansal

...Applicant

v.

Satish Jindal

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. N.S. Shekhawat, 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 Satish Jindal for grant of leave to appeal against the judgment dated 14.8.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act') has been dismissed and the accused 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 applicant has a very good *prima facie* case in his favour and the balance of convenience also lies in his favour. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

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

From the record, I find that Naveen Bansal-complainant filed complaint against Satish Jindal under Sections 138 and 142 of the Act. The brief facts of the case/complaint as noted down in the judgment dated 14.8.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, are as under:-

> "Case of the complainant as pleaded in the complaint is that accused is maternal uncle of the complainant. Complainant and accused were partners in a business in Gurgaon. The complainant purchased residential house bearing No.554/4 situated in Mohalla Jacobpura, Gurgaon vide registered sale deed Vasika No.4119 dated 19.05.2005. The whole sale consideration and other miscellaneous expenses were borne by the complainant. At the request of the accused, name of wife of accused that is Suman Jindal was also mentioned in the said sale deed as a dummy partner. The accused and his wife never paid a single penny for purchase of the house and complainant remained in possession of the house since its purchase. On 20th October 2010, accused and complainant mutually agreed to dissolve the said partnership and an amicable settlement was arrived between both the parties. As per the settlement, the

accused is liable to pay a sum of Rs.32,50,000/- to the complainant. The accused also assured the complainant that house bearing No.554/4 behind St. Crispins Senior Secondary School, Jacobpura, Gurgaon will become the sole property of complainant and accused shall get his wife's share transferred in the name of complainant in near future. Accused also agreed to pay the balance amount of Rs.32,50,000/- to the complainant through cheque bearing No.428377 dated 23.10.2010 amounting to Rs.32,50,000/- (for the sake of brevity referred to as “cheque in question”). The said cheque was drawn on Bank of India, Gurgaon Branch. The accused also requested to the complainant not to present the said cheque as accused will pay cash and take back the said cheque. The complainant got the vehicle transferred in the name of accused. But the accused with mala fide and dishonest intention refused to transfer the half share in the house bearing No.554/4 situated at Jacobpura, Gurgaon in favour of the complainant and instituted a false, frivolous and concocted case against the complainant titled as Suman Jindal (wife of accused) Vs. Naveen Bansal which is pending before the Hon'ble Court of Sh. Sunil Chauhan, Civil Judge, Gurgaon. The accused did not follow the settlement which took place between the parties on 20.10.2010. Accordingly, the complainant presented the said cheque in question with his bankers Axis Bank Ltd. on dated 05.04.2011.

The said cheque was returned back dishonoured with the remarks “Insufficient Funds” vide return memo dated 05.04.2011. The complainant served upon the accused statutory legal notice dated 18.04.2011 calling upon the accused to pay the amount of cheque in question. The accused replied to the said legal notice through his counsel vide reply dated 09.05.2011, but did not make the payment of the cheque in question. Hence the present complaint.”

To prove his case, the complainant examined himself as PW-1, PW-2 Jitender, Senior Manager, Oriental Bank of Commerce, PW-3 K.S. Verma, Special Assistant, Bank of India, PW-4 M.M. Chadha, AR of M/s Jackson and Company, PW-5 Sanchit Sharma, Accountant, M/s Great Sales Corporation, PW-6 Surinder Mittal, Prop., M/s Calcutta Pipe Industries, PW-7 Dinesh Kumar Bhardwaj and PW-8 Rajesh Aggarwal and closed his evidence.

At the close of complainant's evidence, the statement of accused was recorded under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant but the accused denied the correctness of the same and pleaded himself as innocent. He denied each and every material piece of evidence and documents. The accused had denied his liability to pay anything to the complainant.

In defence, the accused examined DW-1 Rakesh Saini, Taxation Inspector, DETC, Gurgaon, DW-2 Vimlesh Kumar, Senior Tax Assistant, IT Office, Gurgaon, DW-3 Surinder Kumar, Senior Tax Assistant, IT Office, Gurgaon, DW-4 Laxman, Officer Bank of India, Gurgaon, DW-5 Ishwar Singh, Clerk, Excise and Taxation Department, Gurgaon, DW-6 Ashwani Kumar Seth, Manager, Central Bank of India, Rudrapur, Uttrakhand and DW-7 Surinder Mittal, Prop., M/s Calcutta Pipe Industries.

After appreciating the evidence on record, the learned trial Court acquitted the accused vide the impugned judgment. Aggrieved from the judgment, the appeal along with application seeking leave to appeal has been filed by the complainant.

A perusal of the record shows that firstly, the accused is real maternal uncle of the complainant. During evidence, complainant admitted that accused was proprietor of M/s Jindal Enterprises and he was proprietor of M/s Jindal Fire Safety. He also admitted that the complainant allowed the accused to work from his business premises. It is clear from the evidence that both of them were carrying on their respective business under different firms. The case of the accused is that the complainant had access to the documents of the accused and without the knowledge of the accused, a blank signed cheque was lying with the complainant. The said cheque is from the cheque book issued in the year 2006.

A perusal of the record shows that it is clear that the complainant and the accused were not partners of any firm. As they were not partners in the firms, therefore, the question of dissolution also does not arise. Similarly, the liability of ₹32,50,000/-, as stated in the complaint, as per settlement also does not arise. Otherwise also, there is no document on record to show partnership firm between the parties and dissolution of the said firm and there is also no document to show the settlement between the parties. The defence of the accused has been rather supported by the case of the complainant itself. The accused had also produced so many witnesses. It is duly proved on the record that the cheque was from the cheque book of the year 2006 and it was stated by the complainant that the cheque was given to the complainant in the year 2010 which fact also supports and corroborates the defence version that this cheque was taken by the complainant from the premises where both the complainant and the accused were running separate business. The cheque was signed by the accused, therefore, presumption under Section 139 of the NI Act is in favour of the complainant. It is settled law that this presumption can be rebutted by the accused by raising a probable defence. In the present case, the accused has raised a probable defence which is duly supported and corroborated by the case of the complainant as well as defence evidence. The findings given by the Court below are correct as per evidence and law. In no way, the findings 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. Nothing has been pointed out as to which material evidence has not been considered by the Court below.

Therefore, from the above, I find that the findings have been given by the learned Judicial Magistrate Ist Class, Gurgaon, after appreciating the evidence in right and proper perspective which do not require any interference from this Court and the same are upheld.

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.

September 26, 2018. **(Inderjit Singh)**
Judge

hsp

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