In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1743-MA of 2015

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Date of decision:21.11.2018

Nahar Singh

...Applicant

v.

Charan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Kumar Yadav,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 Charan Singh for grant of leave to appeal against the impugned judgment dated 9.9.2015 passed by learned Sub Divisional Judicial Magistrate, Mohindergarh, 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 impugned judgment of the learned trial Court is contrary to law and facts and the same is not sustainable in the eyes of law. It has also been stated that the judgment of acquittal of the accused/respondent has caused grave miscarriage of justice. 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, accused No.1 real Sadu (brother-in-law) of the complainant and Savita Devi wife of Charan Singh his real sister-in-law, who has not been arrayed as respondent in the present case because her summoning order has been set aside by learned Additional Sessions Judge, Narnaul vide order dated 13.2.2014, borrowed ₹11 Lakhs in the month of February 2011 at the rate of interest ₹1 per hundred per month for one month. As per complainant, the accused was doing business in Megamall Holiday Private Limited but he told him that he is not concerned with said Company. However, accused being his relative ensured to manage all affairs. It has been stated that on demand the accused in discharge of legal liability issued cheque No.052739 dated 10.4.2011 for ₹11,13,000/-, which on presentation for encashment was returned back with the remarks "insufficient fund'. Legal notice was given. When the amount was not paid, the complaint was filed.

To prove his case the complainant got examined Roshan Lal as CW-1, who brought the summoned record, Bharat Singh as CW-2, Dharambir as CW-3, Vinod Kumar as CW-4. He stepped into witness box as CW-5 and examined Pawan Kumar as CW-6.

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 himself stepped into witness box as DW-1 and his counsel tendered documents Ex.D.1 to Ex.D.7 and Mark-DA to DC and thereafter closed defence evidence.

The learned Sub Divisional Judicial Magistrate, Mohindergarh, vide impugned judgment dated 9.9.2015 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.

A perusal of the record shows that firstly, no date has been mentioned as to when the loan amount was advanced. It has only been written as on February 2011 the loan was given. Secondly, no particulars of any type have been mentioned in the complainant at which place; in whose presence etc. loan was given. Further, no receipt or security document was obtained from the accused by the complainant at the time of advancing the loan. No date has been mentioned on which the loan was demanded back. Further, there is no document of any type on record to show loan transaction. No income-tax return has been placed on record nor any account books have been placed on record to show the loan transaction. The case is squarely covered by the judgment of Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028. Further, from the record, I find that in the complaint the complainant is showing that accused No.1 is his real Sadu (brother-in-law) but in the trial Court he deposed that accused is not his real Sadu (brother-in-law). Further, Savita wife of the accused is not his real sister-in-law. Then as to why no documents were obtained while advancing loan of such a huge amount. Further more, in the complaint no source regarding such a huge amount has been mentioned. While appearing in the Court below, the complainant stated that the loan was given on 2.2.2011. If the loan was given on interest to the accused, then as to why no written document was executed. There is nothing on record regarding the terms and conditions of interest except the oral statement. Further, the complainant in cross-examination stated that he was having ₹6 Lakhs by selling his 2/3 buffaloes, crop of cotton, mustard and paddy. ₹3 Lakhs he had borrowed from Satbir on 2.2.2011 without any writing at the rate of interest of 1% per month. He further stated that he borrowed ₹2 Lakhs from Vinod @ 2% per month. It looks unnatural that a person will borrow the amount himself from other persons and will give it to a person, who is neither his friend nor close relative and that also without obtaining any security documents or receipt etc. A perusal of record further shows that there is no document on record as to what type of this loan transaction was. It is in the evidence that the complainant paid back ₹2 Lakhs to Vinod after 10 days, but it has not been explained by the complainant as to from where this amount came to him. Further more, as per the case of the accused, the complainant was also an agent of Megamall Holiday Private Limited along with Dharambir, Surender and Satbir, the owner of which fled away and the cheque in question was forcibly snatched by aforesaid persons and presented to the bank for encashment. A perusal of the cheque in question shows that it was signed by the accused but the name of the complainant has been typed on the cheque which further shows that the cheque was blank and it was typed etc. later on. There is no document on record to show Income-tax return. The amount of more than ₹20,000/- can be advanced only through encashable instrument/document etc.

A perusal of the evidence on record shows that the defence raised by the accused looks probable one which is duly supported and corroborated by defence evidence as well as from the case of the complainant. The presumption under Section 139 of the NI Act can be rebutted by raising probable defence. In the present case, the defence raised by the accused is probable one as there is nothing on the record to show this loan transaction.

Therefore, from above, I find that the findings given by the Court below are correct as per evidence and law. In no way, the findings can be held as perverse. 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. 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 21, 2018. **(Inderjit Singh)**
Judge

hsp

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