In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-176-MA of 2015

.....

Date of decision:19.12.2018

Sushil Kumar

...Applicant

v.

Suraj Bhan

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

**.....**

Present: Mr. Sunil K. Tandon, 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 Suraj Bhan for grant of leave to appeal against the impugned judgment dated 9.10.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 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 perverse and contrary to facts and evidence on record and, therefore, is liable to be set aside. The applicant shall suffer irreparable loss and injury if the special leave to file appeal is not granted. 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 complainant's version, the complainant and accused jointly started business of timber merchant and complainant invested huge amount in the said business, but thereafter the accused committed some misdeeds in the said business and in order to discharge his existing liability towards the complainant, the accused had issued cheque No.120921 dated 8.3.2010 for ₹4,40,000/-, which on presentation for encashment was returned back with the remarks "payment stopped by drawer". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined Ashok Gupta, Manager, OBC as CW-1, who mainly proved the documents cheque Ex.C.1, return memos Ex.C.2 and Ex.C.3, cheque book issuance register Ex.CW.1/B, certified copy of statement of account Ex.CW.1/C. The complainant further got examined CW-2 Rinku Lal, Manager, Central Bank of India, who deposed regarding the documents. He himself examined as CW-3, Bharat Bhushan as CW-4, Jasbir Singh as CW-5, Mani Jain, Handwriting Expert as CW-6 and closed his evidence.

At the close of complainant's evidence, the 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 stated that he has been falsely implicated in the instant case by the complainant by misusing the cheque in question. He further stated that the cheque in question has been lost by him qua which he had also got a DDR lodged with the Police Station. He further stated that said lost cheque has been misused by the present complainant against him in association with one Jasbir. He also examined ASI Mahavir Singh as DW-1, who proved DDR No.12 dated 11.3.2010 Ex.DW.1/A.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 9.10.2014 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 first of all no date, month or year has been mentioned regarding the liability as to how much amount had been invested for the partnership firm and when it was invested. Nothing has been mentioned as to whether any document was scribed at that time. Furthermore, there are no particulars of any type regarding the misdeeds committed by the accused. As to what was the liability and how it arose against the accused has also not been mentioned. There is also nothing on record as to when the amount was demanded back from the accused. While appearing as a witness in cross-examination, the complainant has stated that he had invested about ₹7-8 Lakhs in the said business. He does not know as to how much amount has been invested by him in the business. Secondly, there is no document to show any partnership business. No name of the partnership firm has been given. No account books, no document, no receipt etc. have been placed on record to show that the complainant was partner with the accused along with one Jasbir Singh in the business. There is also no mention of any income-tax return regarding investment in the firm. There is also no dissolution of this partnership firm. Nothing is there as to how much specific money has been invested on which date and how the liability arose against accused. The complainant has stated that the whole money has been invested by him as well as Jasbir Singh and the accused has not invested anything. If that is the case then there should be some terms and conditions. What was the liability of the accused and what he was to get from the business, all this is oral evidence. Furthermore, CW-4 Bharat Bhushan has brought Roznamcha which bears cutting and overwriting. He further stated that he does not know as to whether the accused had taken any money from the complainant firm. He further stated that he does not know who owes money to whom and when the money was withdrawn by any of the partners. The complainant in cross-examination has stated that there was no writing qua any partnership business between the parties. He stated that he does not know the date of investment and further stated that later on matter of investment was reduced into writing between the parties. He also stated that he has not shown the fact of having invested money in partnership business in his income-tax return. He further stated that he had withdrawn money from the Bank account for the purposes of investment, but he does not know the date on which the said withdrawal was made by him. He further stated that he has no document to prove the fact that he was doing joint business with the accused and one Jasbir.

On the other hand, the accused produced DDR No.12 dated 11.3.2010 Ex.DW.1/A regarding loss of cheque. The defence raised by the accused is probable one and the presumption under Section 139 of the NI Act has been rebutted from the case of the complainant itself as well as from the defence evidence. The findings have been given by the learned trial Court as per evidence and law. A perusal of the record shows that the findings given by the trial Court, in no way, 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.

December 19, 2018.

**(Inderjit Singh)**
**Judge**

*hsp*

**NOTE:** Whether speaking/reasoned: Yes

Whether reportable: No