

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1741-MA of 2014

.....

Date of decision:16.10.2018

Ramesh son of Kali Ram

...Applicant

v.

Ramesh Kumar son of Rulia Ram

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sumit Gupta, 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 Ramesh Kumar son of Rulia Ram for grant of leave to appeal against the impugned judgment dated 4.10.2014 passed by learned Judicial Magistrate Ist Class, Karnal, 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 has wrongly and illegally disbelieved

the evidence led by the applicant/complainant though the applicant has completely proved his case against the respondent. The trial Court while passing the impugned judgment of acquittal has totally ignored the settled proposition of law that the provisions of Section 138 of the NI Act do not run counter to the basic principles of criminal law that an accused must be presumed to be innocent. That the conclusions drawn by the learned Magistrate while acquitting the respondent are contrary to law. The learned Magistrate has misread and misconstrued the valuable evidence on the record and resultantly arrived at grossly unjust conclusions. The reasoning given is wholly erroneous and unsound. It has been stated that a perusal of the impugned judgment, prima facie, shows that the same suffers from material irregularity and illegalities. It has also been stated that the reasons given by the learned Magistrate are based upon surmises and conjectures. The various circumstances draw irresistible inference against the respondent. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

As per the averments made in the complaint, the accused borrowed an amount of ₹2,50,000/- as a friendly loan from the complainant with an assurance to repay the same within a period of one year. In discharge of this liability, the accused issued a cheque bearing No.001164 dated 17.3.2011 for ₹2,50,000/- in favour of the complainant. On presentation of this cheque for enactment, the same was returned back with the remarks "Account closed". Legal notice was given. When the amount was not paid within the statutory period, the complaint was filed.

The complainant examined himself as CW-1 and Arun Sharma as CW-2 and closed his evidence.

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. The accused also examined himself as DW-1 and stated that he had handed over the cheque in question as security cheque to Arun Sharma in the year 2004-05. He also tendered statement of account for the period from 19.2.2005 to 31.3.2013 Mark-DX and closed his evidence.

The learned Judicial Magistrate Ist Class, Karnal, vide impugned judgment dated 4.10.2014 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 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.

A perusal of the record further shows that there is no document

on the record to show the loan transaction. The defence of the accused is that he used to sell the crops to one Arun Sharma, Commission Agent, who was also very well known to the complainant. The accused stopped selling crop through Arun Sharma and he handed over the cheque in question, which was blank as security cheque, to the complainant who misused the same and filed a false complaint.

A perusal of the evidence on record shows that this cheque was filled in the hand of Arun Sharma, Commission Agent, which fact has been admitted by the complainant. Further, the complainant neither in the complaint nor in the affidavit has mentioned the fact that he borrowed an amount of ₹1,20,000/- from Arun Sharma to lend the same to the accused. On the contrary, Arun Sharma CW-2 deposed in cross-examination that an amount of ₹1,20,000/- was given by him to the complainant in order to lend the same to the accused. Arun Sharma had also deposed that his Munim had made a due entry of lending ₹1,20,000/- to the complainant in books of account. Accordingly, the trial Court was of the view that once the accused had denied the factum of borrowing ₹2,50,000/- from the complainant, it was incumbent from the complainant to furnish books of account maintained by Arun Sharma to prove on record that ₹1,20,000/- was given by Arun Sharma to lend the same to the accused, but no such record has been produced. The complainant also stated that he started knowing accused from the shop of Arun Sharma as he and accused used to sell their respective agricultural produce through him. Except this, he had no knowledge about the accused or his family members.

A perusal of the evidence on record shows that the presumption under Section 139 of the NI Act has been duly rebutted by the accused by raising a probable defence which is duly supported from the case of the complainant itself as well as from the cross-examination of CW-2 Arun Sharma. Further this defence has also been supported by the accused while appearing in the witness box as DW-1.

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.

In view of 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.

October 16, 2018.

(Inderjit Singh)
Judge

hsp

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