

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1929-MA of 2015

.....

Date of decision:11.12.2018

M/s Surinder Pal Randhir Singh

...Applicant

v.

Gurpreet Singh

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Jain, Advocate for the applicant.

Ms. Mandeep Kaur, Advocate for Mr. D.S. Sandhu, Advocate
for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Gurpreet Singh-respondent for grant of leave to appeal against the impugned judgment dated 5.10.2015 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 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 gravely erred in acquitting the accused in spite of the fact that there is sufficient evidence on record to show that the accused-respondent committed the offence. The learned trial

Court has wrongly ignored the cogent evidence led by the complainant. 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.

The brief facts of the case are that the complainant is running the business of commission agent in the name and style of M/s Surinder Pal Randhir Singh. The accused used to sell the paddy and wheat to the complainant from time to time and also used to take advance amount from the complainant time to time to meet his daily needs as well as for Urea etc. for crops. The complainant is maintaining the true account in due course of business and a sum of ₹20 Lakhs was outstanding against the accused which the accused has not paid so far to the complainant. The accused after repeated demands of the complainant and in discharge of the liability being part payment issued cheque No.548387 dated 18.11.2013 for ₹6 Lakhs in favour of the complainant, which on presentation for encashment was returned back with the remarks “account dormant”. Thereafter, the complainant issued legal notice dated 20.1.2014. When the amount was not paid, the complaint was filed.

Randhir Singh-partner of complainant examined himself as CW-1. He also examined Bimal Oberoi, Clerk of UCO Bank as CW-2 and closed his evidence.

At the close of the complainant's evidence, statement of accused was recorded 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 and also peladed his false implication. He

stated that the accused used to sell paddy crops or wheat to Surinder Pal one of the partners of the complainant firm and all the accounts were maintained by Surinder Pal. His bank account was opened by Surinder Pal and also obtained his signatures on blank cheque book as security by Surinder Pal. Later on, the complainant misused his security cheque and filed false complaint against him. No amount was pending against the accused.

In defence, the accused examined Nitin, Assistant Manager as DW-1, who stated that he has brought the summoned record wherein an amount of ₹2.5 Lakhs vide cheque No.548385 dated 27.2.2009 has been withdrawn by Surinder Kumar, who has signed at the back of cheque in this regard. An amount of ₹2.5 Lakhs has also been withdrawn by Surinder Kumar vide cheque No.548386 which is also signed by him at its back in this regard and an amount of ₹2.25 Lakhs has been transferred through cheque bearing No.548383 dated 27.1.2009 in the account of M/s Surinder Pal Randhir Singh. Copies of cheques are Exs.D.1 to D.3. He further proved copy of credit voucher Ex.D.4. During cross-examination, DW-1 admitted that both the cheques are of self and payment of such cheque can be withdrawn by any person. During cross-examination, he tendered and proved copies of cheques Ex.P.17 and Ex.P.18. He also proved Ex.C.7 account opening form of Gurpreet Singh wherein Surinder Pal introduced to him to the bank. He admitted it correct that as per the record from the original of Ex.D.1 and Ex.D.2 Surinder Kumar has signed as to receiving of amount on its back whereas on Ex.P.7 account opening form introducer has been written as Surinder Pal. The accused also tendered Ex.D.5 in his

defence evidence and closed his defence evidence.

The learned Judicial Magistrate Ist Class, Ambala, vide impugned judgment dated 5.10.2015 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.

Notice of motion was issued to the respondent.

Ms. Mandeep Kaur, learned Advocate for Mr. D.S. Sandhu, learned Advocate has appeared on behalf of the respondent and contested this application.

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

A perusal of the record shows that firstly, nothing has been mentioned in the complaint regarding the date on which the loan amount was given to the accused. There is also nothing as to whether any interest was to be charged or not. There is also nothing in the complaint as to how much crop has been sold and how much loan amount has been taken by the accused. Furthermore, the accused has taken a probable defence. It has been duly proved by the accused that when his bank account was opened, Surinder Pal, present-complainant and partner of the complainant-firm has introduced him in the Bank. The accused has further proved that Surinder Kumar-Munim of the complainant has withdrawn the money after signing on the back side of the cheques two times ₹2.5 Lakhs each. Further, it has also been proved that ₹2.25 Lakhs has been transferred to the account of the complainant-firm from the account of the accused. Further, as per the

evidence, ₹4 Lakhs were also transferred in the account of the wife of Surinder Pal. There is no explanation regarding the same.

At the time of arguments, learned counsel for the applicant-complainant denied that Surinder Kumar is their Munim, whereas learned counsel for the respondent argued that Surinder Kumar has not been intentionally produced before the Court to prove the entries in the 'Bahi/Roznamcha' as the complainant was knowing that the amount has been withdrawn by their Munim Surinder Kumar by signing on the backside of the cheques. The defence version raised by the accused that the blank signed cheque book has been retained by the complainant is supported and corroborated from the case of the complainant as well as from the defence evidence. Furthermore, I have seen the account books i.e., ledger. All the entries are not signed by the accused. Rather, only some entries of small amounts have been signed by the accused. The other entries cannot be looked into. A perusal of the record shows that the learned trial Court has appreciated the evidence in right and proper perspective.

The findings given by the learned trial Court in this case are correct as per evidence and law. In no way, the findings can be held as perverse or against the evidence. 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. 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 11, 2018.

(Inderjit Singh)
Judge

hsp

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