

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-266-MA of 2017

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Date of decision:11.12.2018

Hari Pal Ahuja

...Applicant

v.

Anurag Mehra

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shobit Phutela and Mr. Shubhnit Hans, Advocates for Mr. Aman Dhir, 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 Anurag Mehra for grant of leave to appeal against the impugned judgment dated 12.12.2016 passed by learned Judicial Magistrate Ist Class, Faridkot, 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 has wrongly acquitted the above said accused against law, facts and evidence on record. It has been stated that the learned trial Court has not read the evidence on record which has resulted into manifest injustice to the applicant. The judgment is based on

surmises and conjectures. The learned trial Court instead of appreciating the evidence on record had relied upon supposition and had come to the erroneous conclusion, which has resulted into erroneous findings. 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 of the complainant is that accused borrowed a sum of ₹7,25,000/- from the complainant through cheque No.590295 dated 9.4.2014 drawn on Oriental Bank of Commerce, which was duly got encashed by the accused, with the promise to repay the same as and when demanded by the complainant along with interest @1.5% per month as per usage and custom prevailing in the market. It has been claimed that on the demand of complainant to return his money, the accused in discharge of his partial liability signed and issued cheque No.140084 dated 15.12.2014 for ₹3,50,000/- drawn on State Bank of India, Satta Bazar, Kotkapura, which on presentation was returned back with the remarks “exceed arrangements”, regarding which a complaint under Section 138 of the NI Act was filed by the complainant, which was later on compromised with the intervention of respectable and as per compromise the accused signed and issued a post-dated cheque No.140088 dated 5.6.2015 for ₹7,25,000/- towards principle amount in favour of the complainant and accordingly the complainant withdrew the complaint filed against the accused on 24.2.2015. Again the cheque was presented which was returned back dishonoured with the remarks “exceed arrangements”. Legal notice was issued. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-2 and also examined Jasjit Singh, SA, OBC, as CW-1 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.

The learned Judicial Magistrate Ist Class, Faridkot, vide impugned judgment dated 12.12.2016 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 it is admitted by the complainant in his cross-examination that he advanced amount of ₹7,25,000/- by way of cheque in favour of M/s Rose Agro Foods. CW-1 brought the relevant record pertaining to the firm M/s Rose Agro Foods and he states that it is a partnership firm and having two partners including the present accused. CW-2 complainant has further admitted that cheque Ex.C.9 was issued by the accused being the proprietor of M/s Rose Agro Foods. CW-2 has further admitted that as per the 'Rokar' and the account books, amount of Rs.7,25,000/- had been shown to be given to M/s Rose Agro Foods. He also deposed that he never served any notice to the partnership concern M/s Rose Agro Foods. He also admitted that the cheque which was issued by

him was in favour of M/s Rose Agro Foods and not in favour of Anurag Mehra. He further admitted that the compromise was entered into between him and Anurag Mehra as partner of M/s Rose Agro Foods and the present cheque was received by him in lieu of said compromise Ex.DA.

A perusal of the record shows that the complainant is totally silent in his complaint as well as in his affidavit Ex.CW.2/A that the amount was given to the firm M/s Rose Agro Foods. Rather, he has claimed that the amount was given to the accused. The loan was given to M/s Rose Agro Foods through cheque and account books also show that the loan was given to the partnership firm and the cheque in question is also from the account of the firm, but these facts are not mentioned in the complaint nor the firm and other partners have been made as parties in this case. Rather, the case of the complainant shown in the complaint is that the amount has been given to accused Anurag Mehra in personal capacity, which is not the case in his cross-examination. Anurag Mehra-accused in his individual capacity cannot be held as liable as he has not taken any loan nor he has issued the cheque from his personal account. The cheque is from the account of M/s Rose Agro Foods and it has taken the loan from the complainant.

Therefore, in these circumstances, I find that the presumption under Section 139 of the NI Act has been rebutted and the accused is entitled to acquittal. In no way, the findings can be held as perverse or against the evidence or law. Rather, the findings have been given after appreciating the evidence in right perspective. Nothing has been pointed out as to how the findings are perverse. Nothing has been pointed out as to

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which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. Therefore, findings of the learned trial Court 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