In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-2066-MA of 2015

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Date of decision:04.10.2018

Dinesh Gujral

...Applicant

v.

Karnail Singh and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Barjinder Singh, Advocate for Mr. Ashish 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 Karnail Singh and Zimidara Service Station for grant of leave to appeal against the impugned judgment dated 21.10.2015 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 Act') has been dismissed and the accused have been acquitted of the charges as framed against them.

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 while acquitting the respondents has acted contrary to law. The evidence on record has not been appreciated at all. The documents have not been given their correct interpretation. It has been mentioned that the reasons given for acquittal are wholly erroneous and unsound. The learned trial Court has totally erred in law while not taking note of the material evidence available on the record. The impugned judgment/order has resulted in miscarriage of justice and is incorrect and is legally untenable. 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, who was in-charge of accused No.2-firm, borrowed a sum of ₹1 Lakh from the complainant in the month of February 2011 on account of friendly relations between the parties. As per the complainant after one month when he contacted the accused for repayment of money, the accused lingered on the matter on one pretext or the other and lastly in the month of April, 2011, the accused in discharge of his existing liability and enforceable debt towards the complainant, issued cheques bearing No.838609 dated 18.4.2011 and another cheque No.838607 dated 25.4.2011 in the sum of ₹50,000/- each. On presentation of these cheques for encashment, the same were returned back with the remarks "A/c closed'. Legal notice was given, when the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1, Rohtas Singh, Record Keeper, Judicial Record Room, Jagadhri as CW-2, Manjit Kaur, Manager, Punjab and Sind Bank as CW-3 and closed his evidence.

At the close of complainant's evidence, accused No.1 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 defence of the accused in the present case is that cheques in questions had been misused by the complainant in connivance with his father Hans Raj Gujral as he had given the cheques in question as a security at the time of becoming a member of a chit fund which was being run by M/s Shree Balaji Investment which allegedly happens to be a proprietorship firm of the father of the complainant.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 21.10.2015 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.

From the record, I find that first of all no date has been mentioned when the loan was given to the accused. Secondly, there are no other particulars regarding this loan transaction. No security document or receipt had been obtained at the time of grant of loan. There is no document on record to show this loan transaction also. There is also nothing as to when the loan was demanded back. No particulars of any type had been mentioned in the complaint that in whose presence and at which place and by which mode, whether by cash or through cheque, the amount had been paid. There is no averments whether this amount was withdrawn from the Bank or not. There is further no document on record of any type to show this loan transaction. No Income-tax returns had been placed on record or any account books or record had been produced to show this transaction. The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, has correctly relied upon the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028. Further, I find that during cross-examination, the accused had raised a probable defence which is duly supported from the case of the complainant itself. The complainant in cross-examination stated that he is an Income-tax assessee and files Income-tax returns and also maintains account books. He also prepares balance-sheet whereby he mentions the list of his sundry debtors and sundry creditors. He further stated that as per law the present transaction between the parties must have been recorded by him in his balance-sheets. He also stated that he does not know whether Zimidara Service Station had ever been a member of chit fund which was being run by Shree Balaji Investment. He further stated that he lives with his father in one house and further stated that he had also collected money on behalf of Shree Balaji Investment on a couple of occasions. He also stated that he had received money from the accused as well as his wife on a couple of occasions, but he does not know the date as well as the amount which was taken by him from the accused and his wife. He stated that he had given the receipt to that effect to the accused and his wife and the money, which was collected by him, was the money which the accused and his wife had taken dasti from his father. He admitted the suggestion that there exists financial disputes between his father and the wife of the accused. He further stated that when money was allegedly given by him to the accused nothing was reduced into writing between the parties. He stated that he does not know the date when money was allegedly advanced by him. CW-3 Manjit Kaur, Manager, Punjab and Sind Bank proved the vouchers and cheques through which payments were allegedly made by M/s Shree Balaji Investment to Zimidara Service Station in the year 2008-09.

The defence version raised by the accused in this case is probable one which is duly supported from the case of the complainant itself. The presumption under Section 139 of the NI Act has been duly rebutted by the accused. 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.

October 04, 2018.

(Inderjit Singh)
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No