

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5506 of 2015
and
Criminal Misc. No.A-250-MA of 2015

.....

Date of decision:27.11.2018

M/s Raghu Sons Company

...Applicant

v.

Chic Clothing Exports and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.K. Tripathi, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.5506 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 48 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-250-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Chic Clothing Exports, Arjun Singh and Neeraj Chawla-respondents for grant of leave to appeal against the impugned judgment dated 2.9.2014 passed by learned Judicial

Magistrate Ist Class, Gurgaon, vide which the complaint filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI 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 applicant is directly affected by the decision of the case, therefore, prays for grant of special leave to file the appeal. 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 complainant-firm deals in the business of purchase and sale of clothes/fabrics and embroidery works. Accused Nos.2 and 3 are partners of accused No.1-firm. Accused No.2 and 3 are in-charge and responsible for the conduct of its business and they are looking after the business of accused No.1 firm jointly. The accused approached the complainant firm to supply the clothes on credit basis to them. They had promised to pay the price of the clothes purchased by them on credit basis within two weeks of respective purchases. Believing on accused's representation to be correct, the complainant had started supplying clothes to the accused persons on credit basis. However, the accused have not made payment for the clothes purchased by them. As per their said accounts, an amount of ₹2,84,580/- was outstanding and payable by the accused to the complainant. On demand, the accused issued cheque

No.130106 dated 26.3.2012 amounting to ₹2,84,580/-, which on presentation for encashment was returned back with the remarks “insufficient funds”. Legal notice was given. When the amount was not paid, the complaint was filed.

Rajesh Shangani, Proprietor of M/s Raghu Sons-firm examined himself as CW-1 and tendered in evidence cheque Ex.C.1, return memo Ex.C.2, legal notice Ex.C.4 and receipt Ex.C.5.

At the close of complainant's evidence, accused were examined under Section 313 Cr.P.C. and they were confronted with the evidence of the complainant, but they denied the correctness of the same and pleaded themselves as innocent.

In defence, the accused also examined DW-1 Parveen Yadav, Assistant Manager, Union Bank of India, who mainly produced the statement of account of Arjun Singh and his wife Renu Ex.DW.1/A.1 and he also stated that on 28.6.2012 an amount of ₹50,000/- was transferred to the account of complainant through NFT. He also tendered the documents Exs.DW.1/A.1 to DW.1/A.4. DW-2 Harmeet Singh, Assistant, Union Bank of India brought with him the statement of account of accused Ex.DW.2/A and stated that as per that statement on 30.3.2012 an amount of ₹1,00,000/- was transferred in the account of complainant through NFT. DW-3 Lalit, Officer, ICICI Bank appeared before the Court and tendered the document Ex.DW.3/1.

The learned Judicial Magistrate Ist Class, Gurgaon, vide impugned judgment dated 2.9.2014 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.

It is settled law that presumption under Section 139 of the NI Act can be rebutted by the accused by raising probable defence. In the present case, the accused raised probable defence showing payment of ₹1,50,000/- to the complainant and DWs, who are bank officials, have duly proved these payments through NFT in the account of the complainant. These payments have not been contested by the counsel for the complainant/applicant even before this Court. Even out of ₹2,84,580/- total, ₹1,50,000/- have been paid before issuance of the notice, then as to why in the legal notice the complainant has demanded ₹2,84,580/-. Otherwise also, the complainant has not mentioned this amount which complainant has received from the accused. Further more, the defence of the accused is that the cheque in dispute was given as security cheque and thereafter the accused also made part payments regarding transactions but despite that the complainant has presented the cheque for total amount. The learned trial Court held that, at the most, when the notice was given only amount of ₹1,34,580/- was payable by the accused, but even then the complainant has raised the demand of ₹2,84,580/- in the legal notice, therefore, the complainant failed to prove the necessary ingredients under Section 138 of the NI Act and the accused were not liable to pay ₹2,84,580/- as claimed by

the complainant in the legal notice as well as in the complaint.

Therefore, keeping in view the above facts, I find that, in no way, the findings given by the trial Court 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.

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.

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.

November 27, 2018.

(Inderjit Singh)
Judge

hsp

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