

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-394-MA of 2015

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Date of decision:2.11.2018

Suresh Kumar

...Applicant

v.

Sunita Devi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arun Sharma, Advocate for the applicant.

Mr. R.K. Bagga, 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 Sunita Devi for grant of leave to appeal against the impugned judgment dated 6.12.2014 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the complaint filed under Sections 138 and 142 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 her.

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 accused-respondent has wrongly been acquitted by the

learned trial Court. It has been stated that the applicant shall suffer irreparable loss and grave injustice if the leave to appeal is not granted to him. 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 on 22.9.2009, the accused borrowed an amount of ₹1,40,000/- from the complainant and promised to repay the entire amount along with interest @2% on 20.1.2011. The accused was required to pay an amount of ₹1,81,900/- and it was in discharge of this liability, she issued cheque No.751453 dated 21.1.2011 for ₹1,81,900/-, which on presentation for encashment was returned back with the remarks "funds insufficient". The accused again approached the complainant and issued cheque No.751455 dated 10.1.2012 for ₹1,85,000/-, which was again presented for encashment, but the same was returned unpaid with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and tendered affidavit Ex.CW.1/B reiterating the averments made in the complaint.

Then Deepanshu, Sales Executive, HDFC Bank, Karnal, was examined as CW-2. He tendered certified copies of statement of account of complainant Ex.CW.1/A and cheque return register Ex.CW.2/B. Ajay Gupta, Assistant Branch Manager, Kotak Life Insurance, Kanak was examined as CW-3.

At the close of complainant's evidence, accused was examined under Section 313 Cr.P.C. and she was confronted with the evidence of the

complainant, but she denied the correctness of the same and pleaded herself as innocent. In defence, the accused examined Ravi Kumar as DW-1, who tendered affidavit Ex.DW/1A controverting the stand of the complainant.

The learned Judicial Magistrate Ist Class, Karnal, vide impugned judgment dated 6.12.2014 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.

Notice of motion was issued in this case.

Mr. R.K. Bagga, learned Advocate has appeared on behalf of the respondent and contested this application.

I have heard learned counsel for the applicant as well as learned counsel for the respondent and have gone through the record.

From the perusal of the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Karnal, are correct as per evidence and law. In no way, these findings can be held as perverse or against the evidence and law. 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 no document on record to show this loan transaction. No security document has been taken at the time of advancing a huge amount to the accused. Furthermore, there are no particulars given in the complaint that at which place and in whose presence the amount was given, as to whether the amount was withdrawn from the

bank or it was given to the accused in cash. The defence of the accused is that she was engaged as an agent in Kotak Mahindra Life Insurance Company (hereinafter referred to as 'the Company') by the complainant and two cheques were taken by the complainant. The complainant had misused the cheques in question by filling the columns of the said cheques to file a false complaint against her.

At the time of arguments, it was admitted that as per procedure, two cheques are taken while recruiting as an agent. The complainant had recruited the accused as an agent for the Company although she must have been shown to be working under Rajeev Rana, Sales Manager. Further, the admission on the part of the complainant that the husband of the accused used to work on the licence of the accused and had given many policies to him sufficiently establishes on record that the accused in actual was working under the complainant and not Rajeev Rana. Further, from the record, it is clear that earlier the complainant filed a complaint, which was withdrawn by him stating that they had entered into a compromise with the accused which makes the case of the complainant further doubtful. The presumption raised under Section 139 of the NI Act has been duly rebutted by the accused by raising probable defence which is duly supported and corroborated from the case of the complainant as well as the defence evidence. 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

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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.

November 2, 2018.

(Inderjit Singh)
Judge

hsp

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