

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-500-MA of 2017

.....

Date of decision:21.8.2018

Saroj

...Applicant

v.

Surinder Singh Salaria

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Narender Kumar, 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 Surinder Singh Salaria-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 12.12.2016 passed by learned Judicial Magistrate Ist Class, Gurdaspur, whereby 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-respondent has been acquitted of the charge as framed against him.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 12.12.2016 passed by learned learned Judicial Magistrate Ist Class, Gurdaspur, which is likely to succeed on the grounds mentioned therein. It has been stated that

the learned trial Court has committed grave illegality while acquitting the accused under Section 138 of the NI Act, which has resulted into miscarriage of justice. The findings of the learned JMFC are perverse. It has, therefore, been prayed that this application seeking leave to appeal be allowed.

From the record, I find that Saroj-complainant filed complaint against Surinder Singh Salaria under Section 138 of the NI Act. As per the averments made in the complaint, accused borrowed an amount of ₹2 Lakhs from the complainant vide cheque No.983791 dated 11.1.2013 for his business. At the time of taking loan, it had been undertaken by the accused that he will refund the entire amount within 3-4 months. When the accused failed to repay the amount within the stipulated period and complainant started demanding the same, then to discharge his liability, accused issued cheque bearing No.942566 dated 27.8.2013 amounting to ₹2 Lakhs, which on presentation for encashment returned back with the reasons "funds insufficient". Then a legal notice was issued. When the amount was not paid then the complaint was filed within the statutory period.

The complainant examined herself as CW-1 and tendered her duly sworn affidavit Ex.CW-1/A and also proved on record original cheque Ex.C-1, memo dated 29.10.2013 Ex.C-2, legal notice Ex.C-3 and postal receipt Ex.C-4. CW-2 S.P.S. Rana, Senior Manager, UCO Bank, Gurdaspur, proved cheque Ex.C-1 and memo Ex.C-2. This witness has admitted that the account statement Ex.D-1 of firm of accused, namely, Navipur Agro Private Ltd., Gurdaspur, reflects the entry of transfer of an amount of

₹1,50,000/- on 29.4.2013 from the account of firm of the accused to the account of Saroj-complainant.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the complainant. The accused denied the correctness of evidence and pleaded himself as innocent. In defence, he examined Jasbir Kaur as DW-1, who produced the record regarding VAT returns.

The learned Judicial Magistrate Ist Class, Gurdaspur, vide judgment dated 12.12.2016 after appreciation of the evidence acquitted the accused. Aggrieved from the impugned judgment the present appeal along with application seeking leave to appeal has been filed.

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

A perusal of the record shows that the findings have been given by the learned Judicial Magistrate Ist Class, Gurdaspur, by correctly appreciating the evidence in right perspective. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below.

Specific suggestion was put to complainant CW-1 that ₹1,50,000/- has been repaid on 29.4.2013 to the complainant by transferring the said amount in her account to which the complainant has not denied specifically, rather, shown ignorance. If this suggestion is not denied and ignorance has been shown, it means to indirectly admitting the fact. Again

CW-2 S.P.S. Rana, Senior Manager, UCO Bank had been examined by the complainant to prove the cheque, memo etc. This witness had admitted account statement Ex.D.1 of the firm of the accused, namely, Navipur Agro Private Ltd., Gurdaspur, which reflects entry of transfer of amount of ₹1,50,000/- on 29.4.2013 from the account of the firm of the accused to the account of Saroj. After his cross-examination, the complainant had ample opportunity to rebut the entry Ex.D.1 by producing her bank account statement for the said period to prove that no such amount of ₹1,50,000/- had been transferred in her account. It is settled law that presumption under Section 139 of the NI Act can be rebutted by the accused by raising probable defence from the case of the complainant itself or by leading defence evidence or both. In the present case, the defence of the accused is that at the time of borrowing the amount a signed cheque had been obtained by the complainant as security. Substantial amount of ₹1,50,000/- was paid but the complainant has filled the cheque for ₹2 Lakhs and demanded this money.

A perusal of the record shows that there is no evidence to rebut the evidence produced by the accused showing the payment of ₹1,50,000/-. The complainant had sufficient time to rebut the entry but the complainant has shown her ignorance and has failed to rebut that this amount was not deposited in her account.

The probable defence raised by the accused has been supported and corroborated by cogent evidence. Therefore, the presumption under Section 139 of the NI Act has been rebutted. The accused has been rightly

acquitted by the Court below. The evidence has been appreciated in proper and right perspective. The learned trial Court has given the findings correctly as per evidence and law, which 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.

August 21, 2018.

(Inderjit Singh)
Judge

hsp

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