

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-561-MA of 2014

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Date of decision:14.12.2018

Prabha Sharma

...Applicant

v.

Mohit Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

None for the respondent.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Mohit Kumar for grant of leave to appeal against the impugned judgment dated 25.11.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 the applicant is directly affected by the decision of the

case. 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 brief facts of the case, Smt. Prabha Sharma-complainant has filed the instant complaint alleging that the complainant is the special power of attorney holder on behalf of his wife Smt. Prabha Sharma. As per version of the complainant, the accused borrowed a friendly loan of ₹3 Lakhs in cash from his wife on the pretext that he was in dire need of money. In order to discharge his existing liability, accused issued cheque No.363211 dated 11.5.2009 in the sum of ₹3 Lakhs drawn on State Bank of India, which on presentation for encashment returned with the remarks “insufficient funds”. Legal notice was issued. When no amount was paid during the statutory period, then the complaint was filed. The complainant examined D.S. Sharma, Special Power Attorney holder for the complainant as CW-1. The complainant also examined CW-2 A.K. Saini, Deputy Manager, S.B.I., Sarai Khawaja, Faridabad , who proved the bank statement and closed his evidence.

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, but he denied the correctness of the same and pleaded himself as innocent. He also stated that he does not know Prabha Sharma. Her husband D.L. Sharma approached him with an offer to sell a property below the market price and requested him to issue a blank signed cheque. Believing his representation, he had issued the cheque in question as security. The said D.L. Sharma failed to buy any property from him. He has

further stated that he has merely signed the cheque in question and other particulars are not filled by him. D.L. Sharma did not return the cheque on the pretext that the same has been lost. He further stated that he had not received any legal notice. The cheque Ex.C.1 was not issued in discharge of any liability and is without consideration.

The learned Judicial Magistrate Ist Class, Faridabad, vide impugned judgment dated 25.11.2013 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.

Earlier on one date Mr. J.S. Dadwal, learned Advocate has appeared on behalf of the respondent, but later on he absented from the proceedings.

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

A perusal of the record shows that first of all no date, month or year has been mentioned as to when this friendly loan was given to the accused. There are no particulars given in the complaint that in whose presence and at which place this money has been given. There is nothing on the record that any receipt or any security document was obtained at the time of lending the amount. Furthermore, there is no date mentioned in the complaint as to when the amount was demanded back. There is also nothing on the record to show this loan transaction. No document of any

type has been produced on the record to show this loan transaction. CW-1 Special Power of attorney has appeared in the Court but it is no where in the complaint that he was present when the amount was given by Smt. Prabha Sharma to the accused. These facts otherwise are also in the personal knowledge of the complainant Smt. Prabha Sharma, but she has not appeared to depose this material fact before the Court.

In view of the fact that there is nothing on the record to show this loan transaction, therefore, this is fatal to the complainant's case as held in by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028. Further, CW-1 while appearing in the Court has stated that the cheque was given on 12.2.2009, but there is no such case in the complaint that the cheque was post-dated cheque. Rather, it is simply written in order to discharge the existing liability cheque No.363211 dated 11.5.2009 has been issued.

As already discussed, even the special power attorney of the complainant has not stated that he was present at the time of loan transaction and, therefore, he can not depose regarding the loan transaction. The defence raised by the accused is probable one. Furthermore, non-appearing of Smt. Prabha Sharma-complainant to show that she has lent the amount to the accused shows that the defence raised by the accused that he is not knowing Smt. Prabha Sharma and has not taken any loan from her is probable one in view of the evidence produced by the complainant. 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.

December 14, 2018.

(Inderjit Singh)
Judge

hsp

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