

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-765-MA of 2014

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Date of decision:20.7.2018

Dhani Ram

...Applicant

v.

Surender Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rakesh Nagpal, Advocate for the applicant.

Mr. A.P. Bhandari, 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 Surender Singh for grant of leave to appeal against the judgment dated 24.3.2014 passed by learned Judicial Magistrate Ist Class, Guhla, 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 has been acquitted of the charge 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 there are sufficient grounds for grant of special leave to

appeal in the present case. It has also been mentioned that with the acquittal of the accused/respondent, miscarriage of justice has been done. 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.

From the record, I find that Dhani Ram-complainant filed complaint against Surender Singh under Section 138 of the Act. As per the averments made in the complaint the accused had borrowed a sum of ₹1,10,000/- in cash on 10.9.2009 from the complainant which the accused had to repay by instalments and in discharge of part of his existing liability/legal enforceable debt, the accused had issued a post-dated cheque No.029533 dated 12.8.2010 for ₹1,30,000/- i.e. ₹1,10,000/-as borrowed amount plus ₹20,000/- as interest upto 12.8.2010 in favour of the complainant. The cheque on presentation for encashment was dishonoured for the reason “insufficient funds”. The complainant served legal notice upon the accused. Despite receiving legal notice, the payment was not made, hence the complaint was filed.

The complainant examined CW-1 Rajesh Munjal, CW-2 Dhani Ram-complainant, CW-3 Mukesh Kumar, CW-4 Rupinder Kumar and CW-5 Mani Jain, Handwriting and Finger Prints Expert.

On the other hand, the accused examined DW-1 Hukam Chand, Head Cashier, UBI, Cheeka and DW-2 Navdeep Gupta, Handwriting and Finger Prints Expert.

The learned Judicial Magistrate Ist Class, Guhla, vide judgment dated 24.3.2014 acquitted the accused. Aggrieved from this judgment, the

appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of motion has been issued in this case.

Mr. A.P. Bhandari, learned Advocate has appeared on behalf of the respondent and contested this application.

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

From the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Guhla, are correct as per law. The evidence has been appreciated in right perspective. 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.

A perusal of the record further shows that as per the case of the complainant, he had borrowed the amount to repay the loan by instalments but as per the complainant on that very day he issued a post-dated cheque for ₹1,30,000/-. There is nothing in the complaint that the amount was given as loan. No document has been got executed showing the terms and conditions of the loan. Nothing is there as to in how many instalments the loan was to be repaid and from which date it was to start. If the amount had been given on interest, then there should have been any document executed between the parties agreeing specifically for the rate of interest. There is no document on record to show loan transaction. Further more admittedly, there is cutting of date on the cheque. Both the parties had got examined their Handwriting and Finger Prints Experts. The learned Judicial

Magistrate Ist Class, Guhla, in these circumstances himself had seen the cheque and agreed with the opinion given by Navdeep Gupta, Handwriting and Finger Prints Expert examined on behalf of the accused. The previous date was 10.9.2009 which was later on changed, after cutting, to 12.8.2010. The Court below found that this was not cutting by the accused, rather, by the complainant side and also did not agree with the evidence that it bears the signatures of the accused on the cutting, therefore, this cheque will be treated as time barred and should not have been presented at that time. Further more, as discussed above if amount of ₹1,10,000/- had been borrowed and the complainant failed to show any agreement of interest, then demanding of more amount from the accused than the liability is a ground for acquittal of the accused.

After going through the record, I find that the findings have been given as per law after correctly appreciating the evidence. Therefore, finding no ground/merit to grant leave to file appeal, present criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal is dismissed.

July 20, 2018.

(Inderjit Singh)
Judge

hsp

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