

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-803-MA of 2015

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Date of decision:31.10.2018

Inderpal Singh

...Applicant

v.

Didar Singh alias Dara Singh

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kulbhushan Raheja, Advocate for the applicant.

Ms. Dhivya, Advocate for Mr. Navjot Singh, 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.PC. against Didar Singh alias Dara Singh for grant of leave to appeal against the impugned judgment dated 7.3.2015 passed by learned Judicial Magistrate Ist Class, Malerkotla, 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-respondent 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 impugned judgment of acquittal is unsustainable in law and the same is liable to be set aside. It has been stated that by passing the impugned judgment miscarriage of justice has been done.

The brief facts of the case are that the accused borrowed a sum of ₹1 Lakh from the complainant. He in order to discharge the aforesaid liability, issued cheque bearing No.109253 dated 8.3.2012 for ₹1 Lakh, which on presentation for encashment returned back with the remarks “account closed”. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and closed his evidence.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. The accused took the plea that he got financed a vehicle from Aman Finance Company and had issued two cheques including the cheque in dispute and two blank pronotes in favour of Aman Finance Company. These two cheques and pronotes were given by the accused to Finance Company as a security. The complainant was the partner of this Finance Company and now complainant has separated from the company and has misused one of the cheques against him. The accused in his evidence examined Tirath Singh, Junior Assistant in the office of District Transport Office, Sangrur as DW-1 and produced document i.e. register of motor vehicle for transfer of ownership details as per old registration certificate Ex.D.1 and Ex.D.2.

The learned Judicial Magistrate Ist Class, Malerkotla, vide impugned judgment dated 7.3.2015 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.

Ms. Dhivya, learned Advocate appearing for Mr. Navtoj Singh, 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 record, I find that first of all no date, month or year has been mentioned as to when the liability arose. No particulars of advancing the loan had been mentioned. Nothing has been mentioned on which date, in which month or year this loan had been given. There is also nothing in the complaint as to in whose presence and by which mode, whether in cash or through cheque etc., money had been paid. There is no date regarding the demand of the loan amount nor any document is there to show the loan transaction. It is settled law that presumption under Section 139 of the NI Act can be rebutted by raising probable defence. The accused has alleged that he got financed a vehicle from Aman Finance Company and had issued two cheques and two blank pronotes in favour of Aman Finance Company which is not disputed at the time of arguments. The fact that the complainant was earlier partner of this Finance Company was also not disputed. This fact duly supports and corroborates the defence version. The learned trial Court from the cross-examination of the complainant has held that the complainant is involved in the business of money lending and he is

working in a Finance Company. The Court below also held that it looks improbable that a person, who is working in a Finance Company, will lend such an amount without any documentation. A perusal of the record shows that the findings cannot be held as perverse or against the evidence. 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.

October 31, 2018.

(Inderjit Singh)
Judge

hsp

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