

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-901-MA of 2012

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Date of decision:20.08.2019

Gurdit Singh

...Applicant

v.

Vinod Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Saurabh Singla, Advocate for Mr. Pardeep Bajaj, Advocate for the applicant.

Mr. Tanu Sharma, Advocate for Mr. Jatinder Pal 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.P.C. against Vinod Kumar for grant of leave to appeal against the impugned judgment dated 24.7.2012 passed by learned Additional Sessions Judge, Ferozepur, whereby the judgment of conviction and order of sentence dated 15.10.2010 passed by the learned trial Court convicting the accused for the offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and sentencing to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/- and in default

thereto to further undergo rigorous imprisonment for one month has been set aside 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 applicant/appellant being complainant in the original complaint is aggrieved by the impugned judgment dated 24.07.2012 passed by the learned Additional Sessions Judge, Ferozepur. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Gurdit Singh filed complaint against the accused under Section 138 read with Section 142 of the NI Act. As per the averments in the complaint, on 12.12.2008, the accused had issued cheque No.010470 dated 12.12.2008 amounting to ₹3,25,000/- of Punjab & Sind Bank Branch Makhu in favour of the complainant. The complainant presented the said cheque which was dishonoured on the ground of “insufficient funds”. Legal notice was given. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Zira convicted the accused and sentenced him to undergo imprisonment for one year and to pay a fine of ₹10,000/- and in default thereof to further undergo rigorous imprisonment for one month. An appeal was filed against this judgment and order by Vinod Kumar-accused/appellant and the learned Additional Sessions Judge, Ferozepur vide judgment dated 24.07.2012 accepted the

same and acquitted the accused of the charges as framed against him. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed.

Notice of motion was issued in this case.

Mr. Tanu Sharma, learned Advocate for Mr. Jatinder Pal Singh, 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.

After hearing learned counsel for the parties, I find that a perusal of the complaint itself shows that nothing has been mentioned that this cheque has been given in discharge of any debt or liability. In the complaint, it has been simply written that the accused given the cheque of ₹3,25,000/- to the complainant which on presentation was returned back with the remarks “insufficient funds”, which means the complainant himself is not alleging in the complaint that the cheque was for discharge of any debt or liability. There is no mention in the complaint regarding any debt or liability towards the accused. When the complainant himself not alleging that the cheque was in discharge of any debt or liability, therefore, one of the necessary ingredients of Section 138 of the NI Act is missing.

The learned Additional Sessions Judge, Ferozepur has rightly acquitted the accused. In no way, the findings given by the learned Additional Sessions Judge can be held as against the evidence or 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

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learned Additional Sessions Judge 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 learned Additional Sessions Judge, Ferozepur 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.

Therefore, from the above discussion, 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 20, 2019.

(Inderjit Singh)
Judge

hsp

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