

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.24872 of 2018
and
Criminal Misc. No.A-1398-MA of 2018 (O&M)

.....

Date of decision:01.02.2019

Angrej Singh

...Applicant

v.

Gurdeep Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Samir Rathaur, Advocate for Mr. Sumeet Goel, Advocate
for the applicant.

.....

Inderjit Singh, J.

Cr. Misc. No.24872 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 3 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1398-MA of 2018:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Gurdeep Singh for grant of leave to appeal against the impugned judgment dated 31.3.2018 passed by learned Additional Sessions Judge, Karnal, vide which the appeal against

the judgment dated 18.1.2014 and order of sentence dated 23.1.2014 passed by learned Judicial Magistrate Ist Class, Karnal, has been accepted and the accused has been acquitted of the charges as framed against him in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

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 it would be in the interest of justice and equity if the present application is allowed and the applicant-appellant is granted leave to file appeal against the judgment of acquittal. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

The brief facts of the case are that in the month of September 2010, the accused approached the complainant to borrow an amount of ₹4 Lakhs as a friendly loan to meet his personal needs and promised to return the said amount within a period of four months. After the expiry of four months, the complainant went to the accused and demanded his money. Initially, the accused kept on postponing the matter on one pretext or the other and finally issued cheque No.666155 dated 18.1.2011 of ₹4 Lakhs drawn at Punjab National Bank, Assandh in favour of the complainant. The complainant presented the said cheque for encashment with his bankers, but the same was returned unpaid with remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and tendered in

evidence the cheque, memo, legal notice and postal receipt. He also examined CW-2 S.K. Mittal, Senior Manager, Punjab National Bank, Assandh, Karnal.

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. The accused also tendered copy of FIR No.374 dated 20.6.2011 Ex.D./1, copy of charge-sheet Ex.D.2, copy of order dated 6.11.2012 Ex.D.3, certified copy of civil suit No.148/11 titled as "Gurdeep Singh Vs. M/s Gurnam Singh Gurinder Singh" Ex.D.4 and copy of challan pertaining to FIR No.374 dated 20.6.2011 Mark-A.

The learned Judicial Magistrate Ist Class, Karnal, vide impugned judgment dated 18.1.2014 after appreciating the evidence convicted the accused and vide order dated 23.1.2014 sentenced him to undergo rigorous imprisonment for two years and to pay a fine of ₹500/- under Section 138 of the NI Act and in default of payment of fine to further undergo simple imprisonment for 7 days. Aggrieved from the said judgment and order, the accused filed appeal before the learned Sessions Judge, Karnal, which was allowed vide judgment dated 31.3.2018 passed by the learned Additional Sessions Judge, Karnal and the accused was acquitted of the charges as framed against him. Aggrieved from this judgment the present appeal along with application seeking leave to file appeal has been filed by the complainant.

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

From the record, I find that first of all no date has been mentioned as to when the loan was given to the accused as it is stated to be given in September 2010. There are no other particulars regarding this loan transaction. No security document or receipt had been obtained at the time of grant of huge amount of ₹4 Lakhs. Furthermore, no document has been placed on record to show this loan transaction. There is no date mentioned as to when the loan was demanded back. Similarly, there is no document to show the financial capacity of the complainant to lend such a huge amount. There is also nothing on the record to show such close relations of the complainant with the accused to lend such a huge amount without getting executed any security document. Furthermore, the case of the complainant is that he had sold his land in the year 2008, but no document regarding the same has been placed on record. The complainant has stated that he has withdrawn the money from his bank account on 1.9.2010, but bank account has not been produced to show the withdrawal. Furthermore, the defence of the accused is that one Gurnam Singh was his commission agent and blank cheques were lying with him and these cheques have been misused by the complainant as he is relative of Gurnam Singh.

At the time of arguments, it was admitted that the present applicant is close relative of Gurnam Singh. I have seen the copy of the cheque from the counsel for the applicant which shows the signatures on the cheque are of drawer of the cheque but he has not filled the cheque. The cheque had been filled by some other person which also supports and corroborates the defence version. Further, the accused has produced copies of FIR and civil suit etc. to show that the matter was reported to the Police

regarding misuse of the cheque by Gurnam Singh through his close relative and filing of complaint by the relative of Gurnam Singh against the accused.

The findings given by the learned Additional Sessions Judge in the appeal are correct as per evidence and law. In no way, the findings 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. The learned appellate Court has re-appreciated 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.

February 01, 2019.

(Inderjit Singh)
Judge

hsp

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