

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-140-MA of 2018

.....

Date of decision:31.01.2019

Jagdish Kumar

...Applicant

v.

Mahinder Singh alias Maninder Singh

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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

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**Inderjit Singh, J.**

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Mahinder Singh alias Maninder Singh for grant of leave to appeal against the impugned judgment dated 13.10.2017 passed by learned Judicial Magistrate Ist Class, Kaithal, 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 learned trial Court vide impugned judgment has wrongly and erroneously acquitted the accused-respondent. It has been

stated that the applicant will suffer an irreparable loss and injury in case leave to appeal is not granted and this loss cannot be compensated in any manner whatsoever. 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 the accused to discharge his liability towards the complainant has issued cheque No.070401 dated 06.02.2015 for ₹2,18,000/-, which on presentation for encashment was returned back with the remarks “drawer signatures differ and insufficient funds”. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined Villas Sharma, Manager, IDBI Bank, Kaithal as CW-1 and himself as CW-2 and tendered into evidence documents i.e. cheque, return memo, receipt, legal notice, postal receipt and transaction inquiry.

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 has neither borrowed any amount from the complainant nor given any cheque. He has further taken the stand that his account and account of Mohit son of the complainant was in the same bank and Mohit used to take his cheque book in good faith and he may have taken the said cheque from his cheque book. The complainant and Mohit committed fraud with him and falsely implicated him in the present case.

In defence, the accused examined Ashok Kumar as DW-1 and closed his evidence.

The learned Judicial Magistrate Ist Class, Kaithal, vide impugned judgment dated 13.10.2017 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.

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

A perusal of the record shows that in the present case firstly, no date, month or year has been mentioned as to when the loan amount was given to the accused. There are no particulars of any type regarding this loan amount as to at which place and in whose presence; whether by cheque or in cash the money has been paid etc. Nothing has been mentioned as to whether any security document or receipt had been obtained at the time of giving the loan. Furthermore, there is no date as to when this loan amount was demanded by the complainant. There is no document on record of any type to show this loan transaction.

Keeping in view the facts and circumstances of the case and in view of the fact that the accused is denying the taking of loan and handing over the cheque to the complainant, I find that the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028 is fully applicable to the facts of the case. Furthermore, a perusal of the findings shows that these have been given after appreciating the evidence in right and proper perspective. 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

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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 learned trial Court also held that the complainant has also failed to prove his financial capacity. No income-tax return has been produced to show this loan transaction. The defence raised by the accused is probable one which is fully supported and corroborated from the case of the complainant itself. The presumption under Section 139 of the NI Act has been duly rebutted by the accused. 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.

January 31, 2019.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |