In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1906-MA of 2016

.....

Date of decision:23.01.2019

Chiranji Lal Goyal

...Applicant

v.

Praveen Kumar

...Respondent

....

(2) Criminal Misc. No.A-2046-MA of 2016

.....

Chiranji Lal Goyal

...Applicant

v.

Praveen Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Harkesh Manuja, Advocate for the applicant.

......

Inderjit Singh, J.

This order will dispose of the above mentioned two criminal miscellaneous applications filed under Section 378(4) Cr.P.C. against Praveen Kumar for grant of leave to appeals against the impugned judgments dated 17.09.2016 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') have been dismissed and the accused has been acquitted of the charges as framed

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against him.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that there has been ample evidence on record to prove the guilt against the respondent. It has, therefore, been prayed that these applications be allowed and leave be granted to the applicant to file appeals.

The brief facts of the cases as noted down by learned Judicial Magistrate Ist Class, Hisar, in her judgment dated 17.9.2016, are as under:-

> "Factual matrix of the instant complaint, as averred by the complainant, are that the accused was having very good acquaintance with the complainant and being having cordial relationship, the accused approached the complainant in the month of December, 2009, and represented the complainant that he is carrying a business in partnership and one of the partner intending to leave the partnership to the tune of his share and accused intends to make the complainant as partner in the said business to the tune of share of the partner, who wants to leave the partnership. He has further stated that this business yield a handsome profit and for becoming the partner, the accused required the complainant to hand over only Rs.7 Lacs, which will be invested by the accused in the business and he will incorporate the name of the complainant as a partner and will execute partnership deed in favour of the complainant. The complainant, believing the accused, handed over Rs.7 Lacs

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and accused assured the complainant, that soon in near future, he will execute partnership deed with the complainant.

It has been further averred that despite passing of long time, when nothing has been heard from the accused, the complainant approached the accused for getting information, then the accused prevaricated the matter on one pretext or the other. When after a considerable long time, the complainant had not heard anything from the accused or any formal document stands executed, in respect of the partnership business, the complainant feel deceived and he moved a complaint, against accused on dated 10.5.2014, with the concerned Chowki, where the accused has admitted his guilt and suffered an affidavit before the police on dated 27.5.2014 and offered the complainant to make payment of Rs.7 lacs, within a period of one year. The accused, in discharge of his legally enforceable debt/liability, issued seven account payee cheques each amounting to Rs.1,00,000/- (Rs. One lac only), in favour of the complainant, with the assurance that the same will be honoured as and when presented with the bank. The present complaint is regarding cheque bearing No.012682 dated 4.5.2015 of Rs.1,00,000/- drawn on Indian Bank, Hisar, (hereinafter to be referred as cheque in question). However, the cheque in question on presentation, by the complainant in his bank account, got dishonoured from the Drawer's bank with the remarks “funds insufficient” vide bank return memo dated

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15.5.2015. Thereafter, the complainant sent registered legal notice to the accused on 13.06.2015, but the drawer failed to make the due payment within the stipulated period of 15 days, despite receipt of legal notice. Hence, the present complaint."

The complainant examined himself as PW-1, Subhash Chander, Munshi, Urban Estate-II Chowki, Hisar as PW-2, Surjeet Singh as PW-3 and closed his evidence.

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.

In defence, the accused examined DW-1 Rahul Sharma, Assistant Manager, Indian Bank, Hisar and closed his evidence.

The learned Judicial Magistrate Ist Class, Hisar, vide impugned judgments dated 17.9.2016 after appreciating the evidence acquitted the accused. Aggrieved from the said judgments, the present appeals along with applications seeking leave to file appeals have 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 no way, the findings given by the learned trial Court can be held as perverse or against evidence and law. The findings have been given after appreciating the evidence in right and proper perspective. Nothing has been mentioned as to why the findings given by the learned trial Court are perverse. Nothing has been

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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 findings of the learned trial Court are as per evidence and law.

Furthermore, I find that there is nothing in the complaint on which date, month or year, the complainant handed over ₹7 Lakhs. No receipt or security document was obtained while handing over such a huge amount to the accused. There is no document on record to show this transaction. There is no document executed by the accused promising the complainant to make him partner in the partnership firm. There is also nothing as to how many partners are there. What are the names of the partners of the firm and as to what would be the share of the complainant and other terms and conditions and as to when ₹7 Lakhs were paid. Learned counsel for the complainant relied upon a writing dated 27.5.2014 given before the Police vide which these 7 cheques were also handed over. The accused has raised a probable defence. He has produced Rahul Sharma, Assistant Manager, Indian Bank, Hisar as DW-1, who deposed that the cheque book consisting cheques in question along with other cheque, had been issued to the accused on 29.5.2014. This fact supports the defence version. Cheque book containing the cheques in question has been issued to the accused after 27.5.2014. Therefore, the accused could not hand over those cheques to the complainant on 27.5.2014 which falsifies the case of the complainant and also that the documents have been prepared falsely. Otherwise also, the learned trial Court has relied upon the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028

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(SC), which fully applies in these cases.

Keeping in view the above facts and circumstances, I find that the accused has been rightly acquitted and the complaints have been rightly dismissed by the learned trial Court. 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 appeals. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeals, the same are dismissed.

January 23, 2019. **(Inderjit Singh)**
Judge

hsp

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

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