

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.38828 of 2016
and
Criminal Misc. No.A-2136-MA of 2016

.....

Date of decision:24.01.2019

Suresh Kumar

...Applicant

v.

M/s Ujala Co-operative Labours Constructions Society Ltd. and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. C.S. Singhal, Advocate for Mr. Vikrant Hooda, Advocate
for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.38828 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 2 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-2136-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against M/s Ujala Co-operative Labours Constructions Society Ltd. and others-respondents for grant of leave to appeal against the impugned judgment dated 5.9.2016 passed by

learned Sub Divisional Judicial Magistrate, Bahadurgarh, 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 have been acquitted of the charges as framed against them.

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 wrongly and erroneously dismissed the complaint and acquitted the accused. 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 complainant's case are that he was engaged in the business of building and construction material. As per the requests and orders of the accused persons, the complainant supplied interlock tiles worth ₹5 Lakhs to them. It was in discharge of this liability, the accused issued cheque No.208511 dated 20.7.2012 for ₹5 Lakhs, which on presentation for encashment was returned back with the remarks "funds insufficient". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined Sunil Kumar, official of P.N.B. as CW-1, and examined himself as CW-2 and closed his evidence.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence

of the complainant, but they denied the correctness of the same and pleaded themselves as innocent. The accused No.2 examined himself as DW-1 and closed his evidence.

The learned Sub Divisional Judicial Magistrate, Bahadurgarh, vide impugned judgment dated 5.9.2016 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.

From the record, I find that a perusal of the record shows that in this case the complainant did not possess any licence to carry on business of interlock tiles. There is no document of any type on the record to show sale of the tiles to the accused. The accused had denied this transaction. The complainant is not paying any sales tax to any authority. This is not a registered firm. There is no account books produced on the record. No bill, vouchers or documents of any type have been produced on the record. Even the complainant is not paying income-tax. There is no document on record to show that the complainant is even dealing in the business of interlock tiles. The version of the accused is that the cheque in question as security has been handed over to the complainant before commencement of the business transaction between them and specifically stated that the accused have not purchased any interlock tiles from the complainant. If the complainant is doing the business of interlock tiles, then he might be maintaining some account book, ledger account or any type of register etc.,

but no such document has been produced. It is settled law that presumption under Section 139 of the NI Act is rebuttable presumption. In the present case, presumption has been rebutted even from the case of the complainant itself.

The findings have been given by the learned trial Court after appreciating the evidence in right and proper perspective. In no way, these can be held as perverse or against the evidence and 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 Court below and as to which material evidence has not been considered by the Court below.

Furthermore, no particulars of the transaction of any type have been mentioned as to on which date, month or year and how much tiles have been given to the accused; whether any receipt was taken; whether any bill was issued and as to how these tiles were transported and at which site. There is also nothing as to when the demand was raised by the complainant for the payment of money etc. As already discussed, there is no document on record to show this transaction between the parties.

The defence version raised by the accused in this case is probable one which is duly supported 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 24, 2019.

(Inderjit Singh)
Judge

hsp

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