

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-2382-MA of 2018

.....

Date of decision:03.04.2019

Virender Singh

...Applicant

v.

Ram Prasad

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Deepak Vashishth, 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 Ram Parsad for grant of leave to appeal against the impugned judgment dated 01.09.2018 passed by learned Judicial Magistrate Ist Class, Jind, 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 there has been ample evidence on record to prove the guilt against the respondent. 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 complaint are that the accused was on visiting terms with the complainant having cordial relation being friend. The accused borrowed ₹6,25,000/- in December 2013 in cash on interest @2% per month. The amount was paid in the presence of Vijay son of Chander Bhan. The complainant demanded the amount on 4.6.2014 from the accused and in discharge of his said liability, the accused issued cheque No.006747 dated 4.6.2014 for a sum of ₹7 Lakhs in the name of complainant including interest upto date, which on presentation for encashment was returned back with the remarks “unpaid being closed account”. Legal notice was given. When the amount was not paid, the complaint was filed within the statutory period.

The complainant examined Parveen Kumar as PW-1, who mainly deposed regarding statement of account. PW-2 Naresh Kumar deposed regarding the account of the accused in the Bank and they reported remarks of “Account closed”. PW-3 complainant also deposed regarding photocopy of account statement, bank memo, photocopy of cheques referred/returned register, photocopy of details of account No., Cheque of ₹7 Lakhs Ex.P.5, Legal notice Ex.P.6, postal receipt Ex.P.7 etc.

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 examined in defence DW-1 Naresh Kumar.

The learned Judicial Magistrate Ist Class, Jind, vide impugned

judgment dated 1.9.2018 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 specially the impugned judgment shows that the findings have given by the trial Court after appreciating the evidence in right and proper perspective. In no way, the findings 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. Rather, the findings given by the learned trial Court are as per evidence and law.

Further from the perusal of the record, I find that there is no document of any type on record to show this loan transaction. It has been stated that the amount was given in cash to the accused on interest @2% per month. There is no document of any type to show that he was also to pay the interest. Furthermore, the case of the complainant is that loan amount was given in the presence of one Vijay but that Vijay has not been examined to corroborate the statement of the complainant. There is no document on record to show that the amount has been withdrawn from the bank. No receipt was taken at the time of advancing the loan. No security document was obtained from the accused nor there is any type of document to show the loan transaction. Even the date has not been mentioned as to

when the loan was given. Only month and the year have been mentioned. As per the complainant this huge amount of ₹6,25,000/- had been given in December 2013 but as per evidence the account was already closed in February 2013. As per the complainant, this cheque had been given on 4.6.2014, but it looks unnatural that the accused will give the cheque on 4.6.2014 when the account had already closed about 1½ years earlier. It becomes more important when there is no document to show the loan transaction and it is difficult for the complainant to recover the amount. There is no document to show this loan transaction. If the intention of the accused was to cheat the complainant, he could have very well done by simply borrowing the loan, why he will create evidence by issuing the cheque to the complainant of already closed account. It is settled law that the presumption under Section 139 of the NI Act can be rebutted by raising a probable defence. The accused has raised a probable defence that the blank signed cheque had been misused by the complainant as he was having no liability to pay the amount. It had been admitted by the accused in cross-examination that the cheque Ex.P.5 was filled-up by Vijay, who belongs to his friend circle but Vijay was not examined. Furthermore, this filling-up of the cheque by one Vijay also supports and corroborates the defence version that the cheque has been misused. The complainant in cross-examination has stated that the amount was already lying at his house from agricultural income, but he has no account of that amount. He does not possess any 'J' Form. He further stated that his wife is in Government job. He has also asked for money from his wife, but he does not remember the exact amount, which he gave to the accused after taking from his wife. He admitted that

no amount was withdrawn from the Bank. His wife was also not examined. The Court below from the evidence also held that there is no cogent evidence to show that the accused has friendly relation with the complainant. The findings given by learned trial Court show that these have been given as per evidence and law. The accused has raised a probable defence, which is duly supported from the case of the complainant itself.

Keeping in view the above facts, I find that 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.

April 03, 2019.

(Inderjit Singh)
Judge

hsp

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