

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1253-MA of 2015

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Date of decision:18.01.2019

Daljit Singh

...Applicant

v.

Darshana Devi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Mehndiratta, Advocate for the applicant.

Mr. Ranjan Lohan, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Darshana Devi for grant of leave to appeal against the impugned judgment dated 13.04.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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 it would be in the interest of justice that leave to appeal be granted and the appeal be heard on merits. 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 as noted down by learned Judicial Magistrate Ist Class, Chandigarh, in his judgment dated 13.04.2015 are as under:-

“Complainant has instituted instant complaint alleging that accused approached him for a financial help of Rs.11,00,000/-. In view of the friendly relationships, complainant arranged a sum of Rs.1,80,000/- on 05.01.2011 from his friend Bahudutt Sharma, a sum of Rs.1,50,000/- from a business concern i.e. Right Concept Group, 2nd Floor, SCO No.215-217, Sector 34-A, Chandigarh on 10.01.2011, a sum of Rs.1,33,000/- on 01.02.2011 and Rs.4,00,000/- on 19.02.2011 from the account of his son out of which Rs.2,00,000/- was arranged after cancelling the fixed deposit of his son on 17.02.2011, a sum of Rs.1,00,000/- on 01.03.2011 and another sum of Rs.1,00,000/- on 05.03.2011 from his friend Shri Joginder Singh and paid the amount to accused. In total a sum of Rs.10,63,000/- was got arranged and paid to the accused against the demand of Rs.11,00,000/-. Complainant further alleged that in order to discharge her liability towards him, accused issued cheque bearing No.436533 dated 05.03.2011 drawn on State Bank of Patiala, House No.199, Sector 7, Panchkula for a sum of Rs.10,63,000/-, that on presentation for clearance on 16.04.2011 to his bankers i.e. Oriental Bank of Commerce, Sector 9-D, Chandigarh, was returned unpaid by banker of accused vide memo dated 16.04.2011 with remarks

“Inoperative Account”. Complainant sent a legal notice dated 25.04.2011 through registered AD and speed post demanding the payment of cheque amount and accused sent a reply dated 07.05.2011, but accused failed to make the payment within stipulated statutory period of 15 days. Complainant prayed for summoning and punishing accused for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter called “N.I. Act”).”

The complainant examined himself as CW-1, CW-2 Dinesh Singh, Peon, OBC, CW-4 Sumit (no witness has been numbered as CW-3), CW-5 Joginder Singh and CW-6 Bahudutt Sharma 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 she denied the correctness of the same and pleaded herself as innocent. The accused also pleaded that she had issued the cheque in question in blank form as security in some old transaction of 2008. That the said transaction was cleared, but the complainant did not return the cheque. She also stated that she has no outstanding liability qua cheque in question.

In defence, the accused examined DW-1 Nirmal Kumar, Special Assistant, SBOP, Sector 8, Panchkula, who deposed that cheque book of which cheque in question was a part was issued to accused on 15.07.2005. He also stated that the cheques were encashed from same cheque book during period of 2007 to 2008 as Ex.DW.1/3 to Ex.DW.1/8. DW-2 Kamlesh Chand, Clerk in the office DEEO, Panchkula produced documents Ex.DW.2/1 to Ex.DW.2/9 regarding the non-refundable advance taken by

accused from her provident fund in August, 2008. DW-3 Narinder Rana, Assistant in the office of Director General, Elementary Education, Panchkula produced service record of the accused to depose that accused remained posted as Sanskrit Teacher at G.M.S. Chowki, Panchkula till 04.12.2008 and was then transferred to G.M.S. Tabar, Panchkula vide order dated 04.12.2008. He produced transfer and posting record Ex.DW.3/1 to Ex.DW.3/4.

The learned Judicial Magistrate Ist Class, Chandigarh, vide impugned judgment dated 13.04.2015 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.

Notice of motion was issued in this case.

Mr. Ranjan Lohan, learned Advocate has appeared on behalf of the respondent and contested this application.

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

From the perusal of the record, I find that the findings given by the learned Judicial Magistrate Ist Class, Chandigarh, are as per evidence and law. 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 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.

Further, from the perusal of the record, I find that there is no document on record to show the loan transaction between the complainant and the accused. Furthermore, though the complainant has stated that he had given loan of ₹11 Lakhs, but he has not contributed even a single penny in ₹11 Lakhs. He stated that he received ₹5,33,000/- from his son including amount arranged after cancelling FDR of ₹2 Lakhs. Further he had taken ₹2 Lakhs from Joginder Singh and another ₹1,80,000/- from his friend Bahudutt Sharma and paid all this total sum of ₹10,63,000/- to the accused and the accused issued cheque No.436533 dated 05.03.2011 for a sum of ₹10,63,000/-. As per the record on 5.3.2011, the complainant had taken the amount from Joginder Singh which means that when he was paying the amount to the accused, the accused issued the cheque for discharge of the total liability. It is not post-dated cheque. It looks unnatural that a person will lend such a huge amount after borrowing the money from other persons and even encashing the FDR of his son etc. The complainant has tried to bring Bahudutt Sharma, Joginder Singh and his son to the witness box but all of them are deposing regarding giving of money to the complainant and not to the accused. There is no cogent evidence on record to show the loan transaction to the accused by the complainant. Why no receipt or document was obtained, there is no explanation regarding the same by the complainant. Furthermore, the accused has proved the fact that this cheque book was issued to her in the year 2005 and the other cheques from the cheque book were got encashed in the year 2007 and 2008 whereas in the complaint, the complainant is saying that this cheque was given on 5.3.2011, which also supports and corroborates the defence version taken by

the accused that the cheque was taken earlier in the year 2008. Furthermore, on the backside of the cheque in question the name and particulars of the accused have been written and that address is of the school from which she was transferred on 4.12.2008. This fact also shows that this cheque was given when she was posted at G.M.S., Chowki, Panchkula. This fact further supports and corroborates the defence version. The presumption under Section 139 of the NI Act can be rebutted by raising a probable defence and in the present case the accused has raised a probable defence which is supported from the case of the complainant as well as defence evidence. The presumption has, therefore, been rebutted.

From the above, I find that the findings have been given by the learned Judicial Magistrate Ist Class, Chandigarh, as per evidence and law and the same are correct. 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 18, 2019.

(Inderjit Singh)
Judge

hsp

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