

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-12-MA of 2014

.....

Date of decision:9.1.2019

Sanjeev Kumar

...Applicant

v.

Devender Kumar Alwadhi

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashok Kumar Khubbar, Advocate for the applicant.

None 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 Devender Kumar Alwadhi for grant of leave to appeal against the impugned judgment dated 23.10.2013 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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-respondent 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 has totally ignored the evidence and proposition of law while dismissing the complaint. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

As per the averments made in the complaint, accused-Devender Kumar Alwadhi in discharge of his existing liability towards the complainant, issued two cheques bearing No.757064 dated 14.3.2009 for ₹40,000/- and cheque No.757065 dated 15.3.2009 for ₹35,000/-, which on presentation for encashment returned with the remarks “funds insufficient”. Legal notice was given. When the amount was not paid, the complaint was filed.

In order to prove his case, the complainant examined Bhushan Kumar official from Punjab National Bank as CW-1, who proved statement of account of complainant as Ex.CW.1/A and other documents. He also got examined Amarjit Singh, Clerk of Vijaya Bank as CW-2 and also examined himself as CW-3 and closed his evidence.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. He stated that the cheque in question was lying with the complainant as security because he and his brother are in the business of timber and used to deal with the complainant, since the accused used to purchase the timber from the complainant. He further stated that he has no

payment to be made to the complainant. He accepted the suggestion that the cheques in question bear his signatures and further accepted the fact that legal notice was received by him. He further stated that after the receipt of legal notice he visited the complainant, who assured the accused that he will not file the complaint against him and as such the accused did not reply to the legal notice. No evidence in defence was produced by the accused.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 23.10.2013 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.

Earlier Mr. D.S. Matya, learned Advocate has been appearing on behalf of the respondent, but today no one has appeared on behalf of the respondent to contest this application.

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

From the record, I find that first of all there are no particulars regarding the existing liability as to how much money has been given and when it was given. No date, month or year has been mentioned as to when the money was given to the accused. There is nothing on record as to in whose presence and at which place this loan amount was given. Moreover, there is nothing on record as to whether the amount was paid in cash or by cheque etc. and on what interest. There are no particulars as to when the

loan was demanded back. No receipt or any security document was obtained at the time of lending the money. Furthermore, there is no document on record to show the loan transaction. Even in the complaint, it has not been mentioned as to what was the total liability. It has been only stated in the complaint that the cheques were given in partial discharge of the liability. Even in the legal notice there is no mention regarding the liability as to how it has arisen. There is nothing as to how much money was lent and on which date. When the complainant appeared in the witness box, he stated that he had advanced ₹1 Lakh. There is no date, month or year as to when this amount was given to the accused. A perusal of the record shows that there is no document of any type to show this loan transaction. The law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028, fully applies to the present case.

Furthermore, it is settled law that presumption under Section 139 of the NI Act can be rebutted by raising a probable defence. In the present case, the accused has raised a probable defence. The complainant in cross-examination has stated to the effect that relation with the accused only began on account of their meeting in the course of their timber business. He further stated in his cross-examination that he does not know the name of the father of the accused and also does not know as to how many brothers and sisters the accused has. He further stated that payment was made by him to the accused on his shop. He further stated that no receipt was executed when payment was made by him to the accused and there was no witness to the said transaction. He also stated that he does not know as to

for what purpose the accused has taken the money from him and further stated that he has not shown the loan paid by him to the accused in his income-tax return. The complainant further stated that the payment was made by him to the accused in cash. He accepted the suggestion that from statement of account Ex.CW.1/A, it is clear that except the cheques in question maximum balance in the account of the complainant has never exceeded ₹16,000/- All this cross-examination of the complainant supports the defence version that the cheques were given as security while making dealings in the timber business. The defence raised by the accused is a probable one.

The learned trial Court has appreciated the evidence in right and proper perspective. In no way, the findings given by the learned Court below 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. Rather, the findings have been given as per evidence and law and the same have been given by the Court below after appreciating the evidence in right and proper perspective which do not require any interference from this Court and the same are upheld. Further more, the defence raised by the accused is a probable one and the presumption under Section 139 of the NI Act has been duly rebutted.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous

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application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal,
the same is dismissed.

January 9, 2019.

(Inderjit Singh)
Judge

hsp

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