

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-311-MA of 2018

.....

Date of decision:17.01.2019

Major Singh

...Applicant

v.

Makhan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Deepak Aggarwal, 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 Makhan Singh for grant of leave to appeal against the impugned judgment dated 15.11.2017 passed by learned Judicial Magistrate Ist Class, Talwandi Sabo, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') read with Section 420 IPC 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 the applicant has *prima facie* a good case in his favour. 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, the accused borrowed ₹1,41,000/- from the complainant and in discharge of his legal liability issued cheque No.866199 dated 21.8.2014 for ₹1,41,000/-, which on presentation for encashment was returned back with the remarks “insufficient funds”. Legal notice was given. When the amount was not paid, the complaint was filed within statutory period.

The complainant examined CW-1 Dharminder Kumar Meena, Manager, PNB, Talwandi Sabo, CW-2 Kamal Kumar of Central Bank of India and himself appeared 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 he was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. In defence, he did not examine any witness.

The learned Judicial Magistrate Ist Class, Talwandi Sabo, vide impugned judgment dated 15.11.2017 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 firstly, no date, month or year has been mentioned as to when the loan was borrowed by the accused. Secondly, there are no documents of any type regarding this loan transaction. No security document or receipt had been obtained at the time of grant of loan. There is also nothing as to when the loan was demanded

back. Therefore, keeping in view of these facts, the case is fully covered by the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013 (1) R.C.R. (Cr.) 1028.

Furthermore, I find that the case of the accused is that he had not borrowed any amount from the complainant. Rather, the cheque in question had been given in a property transaction. When the complainant appeared in cross-examination, he admitted that Major Singh took possession of the land of the complainant for ₹8,70,000/-. He admitted that on 26.8.2014, the accused paid ₹2,80,000/- to him in the presence of Karamjit Singh and Balwinder Singh. He further admitted that ₹64,000/- were given by the accused on 29.8.2014. He stated that he has no receipt qua receipt of ₹4,39,000/- from the complainant. He further admitted that the accused paid ₹50,000/- each on 30.9.2014 and 6.2.2015 and that on 3.2.2015 he received ₹1,30,000/- from accused through Kaka Singh alias Balwinder Singh. He admitted that cheque in question was issued in connection with said property transaction. He further admitted that he has received part payment of said cheque.

Keeping in view the cross-examination of the complainant, I find that the accused has proved the defence. The presumption under Section 139 of the NI Act can be rebutted by raising a probable defence. In the present case a probable defence raised by the accused has been supported and corroborated by the complainant himself. A perusal of the record shows that the findings have been given by the learned trial Court as per evidence and law. In no way, these findings can be held as perverse or against evidence and law. The learned trial Court has rightly acquitted the

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accused. 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. 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 17, 2019.

(Inderjit Singh)
Judge

hsp

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