

**CRM-A-1266-MA-2014**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM-A-1266-MA-2014 (O & M)  
Date of Decision: 25.03.2019**

Jagdev Singh

... Applicant

Versus

Jaipal Pamma @ Palli and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Vivek Gupta, Advocate,  
for the applicant.

Mr. Zorawar Singh, Advocate,  
for the respondents.

**INDERJIT SINGH, J.**

**CRM-24576-2014**

Heard.

For the reasons as mentioned in the application, the same is allowed and delay of 10 days in filing the application seeking leave to file appeal is condoned.

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The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against respondents-Jaipal Pamma @ Palli and M/s Jaipal and Company for grant of leave to appeal against the impugned judgment dated 28.11.2013 passed by learned Judicial Magistrate Ist Class, Phillaur, vide which the complaint filed under Sections 138 and 139 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and Section 420 of the IPC has been dismissed and the accused has

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been acquitted of the charge 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 the grounds mentioned therein. It has been stated that the impugned judgment passed by the trial Court is against facts and contrary to law. The trial Court has misread the oral evidence and misconstrued the documents on record. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file the appeal.

From the record, I find that in the present case, complainant-Jagdev Singh filed a complaint under Sections 138 and 139 of the NI Act and Section 420 of the IPC against respondents-Jaipal Pamma alias Palli and M/s Jai Pal @ Company. It has been mainly stated in the complaint that the complainant gave Rs.4,55,000/- for the business purpose of accused company, but the accused did not give and return even a single penny to the complainant so far. In discharge of his legal liability, the accused issued a cheque bearing No.770122 dated 01.10.2011 for Rs.4,55,000/-. When the complainant presented the said cheque in the bank for its encashment, the same was returned back with the remarks 'Account Closed'. Legal notice was given. When the amount was not paid, the complaint was filed.

On the basis of preliminary evidence led by the complainant, the accused was ordered to be summoned to face trial under Section 138 of the NI Act.

On finding a *prima facie* case under Section 138 of the NI Act,

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guilty and claimed trial.

After serving notice of accusation upon the accused, the complainant examined Sucha Singh as CW 1 and Mithu Sodhi, Clerk as CW 2. Thereafter, he 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 he denied the correctness of the same and pleaded himself as innocent. However, in defence, the accused did not lead any evidence.

Learned Judicial Magistrate Ist Class, Phillaur, vide impugned judgment dated 28.11.2013, 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.

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

Perusal of record shows that in the present case, the complainant himself has not come to the witness-box. One Sucha Singh has appeared as CW 1 and he filed power of attorney on behalf of complainant-Jagdev Singh. The trial Court has held that Sucha Singh was not appointed as power of attorney in this case as in the power of attorney, it is specifically mentioned that the same has been given authorizing Sucha Singh to appear and contest one case titled as 'Jagdev Singh Vs. Munish Kumar and others' and all other disputes pertaining to civil matters.

I have also gone through the vernacular of special power of attorney. In no way, the same relates to the present case. Therefore, Sucha

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case. The complainant himself has not appeared to depose that he had lent the amount to the respondents. Moreover, no month or year etc. have been mentioned in the complaint regarding lending the amount.

Since the complainant has not appeared in the witness-box to depose that the money was lent to the accused, therefore, there is no evidence on record to prove the liability of the accused. The presumption under Section 139 of the NI Act has been duly rebutted, as the complainant has not appeared in the witness-box.

In view of the above, I find that the findings given by the trial Court are correct, as per evidence and law and, in no way, these can be held as perverse. Nothing has been pointed out as to how the findings are perverse or against the evidence and law. 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 a 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.

**25.03.2019**

parveen kumar

**(INDERJIT SINGH)  
JUDGE**

**Note:** Whether speaking/reasoned : Yes  
Whether reportable : No