

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-134-MA of 2014 (O&M)

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Date of decision:9.1.2019

Kamaljit Kaur

...Applicant

v.

Rajinder Singh and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Karan Singla, Advocate for the applicant.

Mr. H.S. Dhindsa and Mr. Ramandeep Singh, Advocates for respondent No.1.

Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab for respondent No.2-State.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Rajinder Singh and State of Punjab for grant of leave to appeal against the impugned judgment dated 14.12.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 accused-respondent No.1 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 been deprived of her hard earned money by respondent No.1. The acquittal of the accused has caused great prejudice to the applicant and the applicant shall suffer irreparable loss if the prayer made in the application is not allowed. 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-Rajinder Singh borrowed a sum of ₹1 Lakh from the complainant and assured her that the amount shall be returned as and when demanded. The complainant approached the accused many times to pay the above said loan amount. On persistent request of the complainant, the accused in order to discharge of his legally enforceable liability towards the complainant issued cheque bearing No.562517 dated 6.5.2008 for ₹1 Lakh. When the cheque was presented for encashment, it was returned back with the remarks “insufficient funds”. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and tendered into evidence documents Ex.C.1 to Ex.C.6, i.e. cheque, memo, legal notice, UPC receipt etc.

At the close of complainant's evidence, accused No.1 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. He stated that there exists no legal liability

towards the complainant and he had never handed over cheque Ex.C.1 to the complainant nor any notice has been served upon him or received by him. As a matter of fact, his wife and himself had taken loan of ₹10,000/- from one Mohinderpal Singh for purchasing of house at the time of sale deed dated 31.7.2007 and Mohinderpal Singh obtained the blank signed cheque from him against the security of repayment of loan amount. Mohinderpal Singh played fraud upon them in connivance with the complainant and prepared false agreement to sell of their house and also forged and fabricated the cheque in question by filling the amount and name of the drawer arbitrarily without his consent and knowledge and filed the present false complaint in order to extract money from them more than the actual amount. The complainant is a witness in the forged and fabricated agreement to sell prepared by Mohinderpal Singh and both have very cordial relations with each other. Mohinderpal Singh filed a civil suit on the basis of said fabricated agreement to sell and complainant appeared as a witness in the said case against the wife of the accused, who was impleaded as defendant in the said case. He has no liability towards the complainant. He also examined DW-1 Mohd. Iftizhar, Ahlmad, who proved the documents regarding civil suit and also examined himself as DW-2.

The learned Judicial Magistrate Ist Class, Ludhiana, vide impugned judgment dated 14.12.2012 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. H.S. Dhindsa and Mr. Ramandeep Singh, learned Advocates have appeared on behalf of respondent No.1 and Mr. Dhruv Dayal, learned Senior Deputy Advocate General, Punjab has appeared on behalf of respondent No.2-State and contested this application.

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

From the record, I find that first of all no date, month or year has been mentioned as to when the loan of ₹1 Lakh was given to the accused. There are no particulars of any type regarding advancing of the loan to the accused. There is nothing on record as to in whose presence and at which place this loan amount was given. No receipt has been got executed nor any security document has been obtained from the accused at the time of of lending such a huge amount. Moreover, there is nothing on record as to whether the amount was paid in cash or by cheque etc. There is also no income-tax return on record to show this loan transaction. There is no document of any type to show this loan transaction. There is also nothing as to when the loan was demanded back. The presumption under Section 139 of the NI Act can be rebutted by raising a probable defence. In the present case, the accused has rebutted the presumption by raising a probable defence by bringing documents of civil suit and it has been proved that the present complainant was a witness of agreement to sell on the basis of which Mohinderpal Singh filed the civil suit against the wife of the accused etc. The findings given by the learned Court below are as per

evidence and law. In no way, these findings 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 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