

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.27534 of 2015  
and  
Criminal Misc. No.A-1449-MA of 2015

.....

Date of decision:04.02.2019

Parveen Yadav

...Applicant

v.

State of Haryana and another

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Sanjeev Kumar Bawa, Advocate for the applicant.

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**Inderjit Singh, J.**

Cr. Misc. No.27534 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 17 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1449-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana and another for grant of leave to appeal against the impugned judgment dated 4.6.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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 No.2 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 impugned judgment of the learned trial Court is contrary to law and facts and the same is not sustainable in the eyes of law. The judgment of acquittal of the accused/respondent No.2 has caused grave miscarriage of justice to the applicant/appellant. 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 complaint as mentioned in the judgment dated 4.6.2015 of the learned Judicial Magistrate Ist Class, Gurgaon, are as under:-

“Brief facts of the case of the complainant are that the complainant is a peace loving citizen and the permanent resident of above mentioned address. The complainant having proprietorship firm in the name of M/s Jai Shree Trading Co. The accused is the person who has signed and issued the cheque in question. The complainant having business relation with accused's son-in-law and daughter namely Sh. Surender Kumar and Ms. Renu Srivastava, who are the Directors of Air Charge Telesys Pvt. Ltd. and having thier registered office at H-17, Ground Floor, New Bridge Business Center, Ocus Technopolis Building, Sector 54, Gurgaon-122002. Further the son-in-law and the daughter of accused has given lucrative offers to complainant and asked to deposit an amount of

Rs.35,00,000/- in their company, with the assurance that they would give business to complainant and under the influence and lucrative offers the complainant made the said payment in the account of the company. Moreover complainant introduced some of his friends namely Sh. Umesh Kumar Taneja, Sh. Vikas, Sh. Sarveen and Sh. Madan Gopal to accused's son-in-law and daughter and on the belief of complainant they all also invested money into the company of accused's son-in-law and daughter. The son-in-law and daughter of accused failed to fulfill their commitment and when complainant and his friends demanded their money back, they bluntly refused to pay the hard earned money of complainant and his fiends. Finally the complainant and other aggrieved victims lodged a complaint before the SHO Sadar, Gurgaon against the son-in-law and the daughter of the accused and there, in the police station, accused's son-in-law and daughter admitted their liability and requested to the complainant and the other victims to withdraw the complaint against them. The accused in order to discharge the liability of his son-in-law and daughter executed an agreement dated 22.6.2013 and took the liability of his son-in-law and daughter and agreed to pay a total sum of Rs.57,39,000/- jointly to complainant and his friends. Further in order to discharge the said liability accused had issued a cheque bearing No.020021, dated 16.8.2013 of Rs.57,39,000/- drawn on HDFC Bank Ltd. 102, First Floor, Greenwood Plaza,

Sector 45, Gurgaon. Thereafter the complainant count upon the assurance of the accused and presented the above-mentioned cheque for encashment to his account maintained by OBC Bank, New Railway Road, Gurgaon Branch but complainant was surprised to know that above-mentioned cheque was returned with returning memo dated 27.8.2013 with the remarks “Payment Stopped by drawer”. Thereafter, the complainant issued a legal notice to the accused on 2.9.2013 through his counsel. Thereafter despite being served with legal notice the accused did not make the payment within a mandatory period of 15 days of the cheque amount. Hence the accused has committed the offence punishable under Section 138 NI Act.”

The accused was summoned in this case and notice of accusation was served upon him, to which he pleaded not guilty and claimed trial.

The complainant examined himself as CW-1 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 he denied the correctness of the same and pleaded himself as innocent and false implication. He also appeared as DW-1 and relied upon the documents i.e. complaint made to DGP, Gurgaon Ex.DW.1/1 and Ex.DW.1/2.

The learned Judicial Magistrate Ist Class, Gurgaon, vide impugned judgment dated 4.6.2015 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.

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

From the perusal of the record, I find that the cheque amount of ₹57,39,000/-, which is stated to be in favour of the complainant but as per the case of the complainant himself the liability qua him was only ₹35 Lakhs. The legal notice was also given for ₹57,39,000/- which means the legal notice was for more than the amount due and payable to the complainant by the accused. Therefore, on this ground the accused is entitled to acquittal. Secondly, I find that it is admitted that the cheque has been issued in the Police Station. The agreement was also executed before the Police which means the defence of the accused that cheque was taken forcibly is supported and corroborated from the case of the complainant. Furthermore, in the agreement it is nowhere mentioned that any cheque has been given to the complainant by the accused. Rather, it has been written in the agreement that if the amount was not paid by the accused, his property will be sold. Furthermore, it is the case of the complainant that his friends etc. had also invested money into the company of son-in-law and daughter of the accused but there are no specific particulars as to when the amount was given and how much amount was given by each and every person. Even the complainant in the complaint nowhere mentioned as to when the amount was paid to the son-in-law and daughter of the accused. Otherwise also, if more than ₹22 Lakhs are to be paid to every person then how this cheque was got issued from the accused by the complainant in the amount

of ₹57,35,000/- in his favour. All these facts support the defence version. Furthermore, it was held by the learned Judicial Magistrate Ist Class, Gurgaon, that the cheques were also issued by son-in-law of the accused which have been dishonoured and qua that the complaints have already been filed.

Keeping in view the above facts, I find that the presumption under Section 139 of the NI Act has been duly rebutted by raising probable defence. A perusal of the record shows that 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. 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.

February 04, 2019.

**(Inderjit Singh)**  
**Judge**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |