

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-149-MA of 2015

.....

Date of decision:23.01.2019

Hari Lal

...Applicant

v.

Nawab Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.K. Sharma, Advocate for the applicant.

Mr. Amit Sharma, Advocate for respondent No.1.

None for respondent No.2.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Nawab Singh and Jitender Singh-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 11.6.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the complaint filed under Sections 420, 406, 467, 468, 471, 506 and 116 IPC has been dismissed and the accused-respondent No.1 has been acquitted of the charges as framed against him and accused No.2 Jitender Singh was not summoned to face trial.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 11.6.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, which is likely to

succeed on the grounds mentioned therein. It has been stated that while acquitting the accused no cogent reasons have been given by the learned trial Court. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Hari Lal-complainant filed complaint against Nawab Singh and Jitender Singh for the offences under Sections 420, 406, 467, 468, 471, 506 and 116 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Faridabad, in her judgment dated 11.6.2014 are as under:-

“Briefly, put the allegations made in the complaint are that the accused No.1 who is running his business under the name and style of Associated Distillery Limited had induced the complainant to invest money in running the said business and assured him that he will make him partner in equal share or will give market rate of interest on the amount which the complainant would invest. The complainant has further alleged that he believed the version of the accused No.1 and handed him blank signed cheque which the accused No.1 has filled up and got credited in the bank account of M/s Associated Distillery Limited. The complainant has further alleged that accused No.1 has neither made the complainant as the partner nor has given him any profit but instead threatened the complainant to kill him in case he demanded back his money. The complainant has further stated that he made a complaint against the accused No.1 to S.P. Faridabad who forwarded the

same to Sh. Jitender Singh, Incharge, Police Post, Sector-15, Faridabad to investigate the matter but said Sh. Jitender Singh connived with accused No.1 and gave his false report. Hence the complaint.”

The learned trial Court summoned accused No.1 Nawab Singh only to face trial for the offences under Sections 420 and 406 IPC and accused No.2 Jitender Kumar was not summoned. During pre-charge evidence, the complainant examined himself as CW-1, Dr. Rakesh Mehta, Surya Hospital, NIT, Faridabad as CW-2, Bari Chand as CW-3 He has deposed that he had given D.D. dated 4.4.2008 amounting to ₹2 Lakhs from his account, which is in Axis Bank, Sector 7 in favour of the complainant as he was in need of the money. Parveen, Clerk, Axis Bank appeared as CW-4. Constable Lalit Kumar appeared as CW-5. Pawan Goyal, Inspector appeared as CW-6 and Hukam Singh, Clerk, P.N.B. appeared as CW-7. Shiv Kumar Patwari, L.O. Office appeared as CW-8 and Surender Clerk, Excise & Taxation Department appeared as CW-9 and the complainant closed his evidence.

On finding a *prima facie* case, charges against accused No.1 Nawab Singh were framed for the offences under Sections 420 and 406 IPC, to which he pleaded not guilty and claimed trial.

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. In defence, he examined Santosh Kumar Patnayak, Secretary, M/s Globus Spirits Ltd. as DW-1 and Surender Kumar, Clerk, Excise & Taxation Department as DW-2 and closed his evidence.

After appreciating the evidence, the accused was acquitted by the learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 11.6.2014. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of motion was issued in this case.

Mr. Amit Sharma, learned Advocate has appeared on behalf of respondent No.1 and contested this application.

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

From the perusal of the complaint itself, I find that it has been written in the complaint that accused has promised the complainant and offered to make him a partner in the firm and to share the profit or to pay the interest at the market rate. A perusal of the complaint itself shows that there is nothing mentioned in it that the intention of the accused was to cheat the complainant from the very beginning. If it is taken that the accused had agreed to pay the interest at the market rate and has not paid the money no offence is made out. Furthermore, there is nothing on the record as to what were the terms and conditions to make the complainant as partner. There is no written document to show this transaction and the promise of the accused to make the complainant as partner in his business. A perusal of the record shows that the learned trial Court has appreciated the evidence in right and proper perspective. In no way, the findings can be held as perverse or against the evidence or law. Even if it is taken that the money has been given by the complainant to the accused, even then to prove the offence, the

complainant is to prove beyond reasonable doubt that he was allured/ induced by the accused to part with the money and the intention of the accused from the very beginning was to cheat him, but these averments are missing in the complaint. If the money has not been returned or the interest has not been paid by the accused to the complainant, he has the civil remedy. Nothing has been shown on record that there is any forgery of any document etc. and the charges were only for the offences under Sections 420 and 406 IPC. A perusal of the record shows that the complainant has failed to prove the case beyond reasonable doubt and the accused has been rightly acquitted by the learned trial Court. 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 23, 2019.

(Inderjit Singh)
Judge

hsp

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