In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1434-MA of 2014

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Date of decision:04.04.2019

M/s Chaudhary Finance Company

...Applicant

v.

Ashok Kumar Rana

...Respondent

.....

(2) Criminal Misc. No.A-1484-MA of 2014

.....

M/s Chaudhary Finance Company

...Applicant

v.

Ashok Kumar Rana

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sushil Jain, Advocate for the applicant.

Mr. G.C. Shahpuri, Advocate for the respondent.

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Inderjit Singh, J.

This order will dispose of the above mentioned two criminal miscellaneous applications filed under Section 378(4) Cr.P.C. by the complainant against Ashok Kumar Rana for grant of leave to appeal against the impugned judgments dated 28.07.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') have been dismissed and the accused has been acquitted of the charges as framed against him.

It has been mainly submitted in the applications that the applicant is filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgments are not sustainable in the eyes of law. The learned trial Court had permitted number of illegalities while passing the impugned judgments and further acquitting the respondent. The learned trial Court had greatly erred at law in acquitting the accused. The learned trial Court had failed to take into consideration the material available on record while passing the impugned order and, therefore, a great prejudice has been caused to the applicant. It has, therefore, been prayed that these applications be allowed and leave be granted to the applicant to file appeals.

The facts have been taken from Criminal Misc. No.A-1434-MA of 2014. M/s Chaudhary Finance Company through its partner Jitender Singh filed complaints against Ashok Kumar Rana under Section 138 of the NI Act. The averments given in the complaints are that in discharge of existing liability towards the complainant the accused issued cheque No. 561811 dated 15.5.2008 for ₹5 Lakhs and cheque No.529629 dated 20.5.2008 for ₹5 Lakhs. When the said cheques were presented for encashment, the same were returned back dishonoured with the remarks “funds insufficient”. Legal Legal notices were given. When the amount was not paid, the complaints were filed within statutory period.

The complainant examined himself as CW-1 and deposed regarding the original cheque as Ex.C.1, return memo as Ex.C.2, copy of legal notice as Ex.C.3, postal receipts as Ex.C.4 to Ex.C.6, UPC as Ex.C.7, acknowledgement due as Ex.C.8 and Ex.C.9, returned envelope as Ex.C.10, power of attorney given by him as Ex.C.11, copy of partnership deed as Ex.CW.1, certified copy of money lending licence as Ex.CW.1/B and certified copy of registration of firm as Ex.1/B. The complainant also examined Munish Kumar, Clerk, HDFC Bank as CW-2, Suresh Kumar official from SBI as CW-3, Jitender Bakshi as CW-4.

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. He also stated that the complaints have been filed by misusing the cheques in question. He further stated that he had never issued any cheque to the complainant and he never had any dealing with him. He further stated that the complainant has connived with one Pushpinder Kaushal, who was having eight blank signed cheques of the accused with him, which were given by the accused to him for securing a loan for him, to file the present false cases against him.

The accused examined Pritam Singh, Ahlmad to learned Judicial Magistrate Ist Class, Jagadhri as DW-1 and he proved in his evidence certified copy of complaint filed by the present accused against Pushpinder Kaushal and present complainant as DW.1/A. He further examined Chanchal Kumar, Addl. Ahlmad to the learned C.J.M, Jagadhri as DW-2, who proved in his evidence certified copy of FIR No.306 registered for the offences under Sections 406 and 420 IPC, which has been filed against Pushpinder Kaushal as DW.1/A and copy of charge-sheet as

Ex.DW.2/B. He further examined Dinesh Sharma, Advocate as DW-3, who proved reply to legal notice as Ex.DW.3/A. The accused further examined Subhash Chander, Clerk of SDM, Jagadhri as DW-4, who proved in his evidence documents Ex.DW.4/A. He further examined Karamvir, Deputy Manager, HDFC Bank as DW-5, who proved statement of account of the complainant-firm from 1.1.2003 to 6.3.2007.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgments dated 28.7.2014 after appreciating the evidence acquitted the accused. Aggrieved from the said judgments, the present appeals along with applications seeking leave to file appeals have been filed by the complainant.

Notice of motion was issued in these cases.

Mr. G.C. Shahpuri, learned Advocate has appeared on behalf of the respondent and contested these applications.

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

At the time of arguments, learned counsel for the applicant argued only on one point that before the trial Court, the complainant gave the statement that he is ready to pay ₹7.5 Lakhs as a whole to the complainant provided the complainant returns his other cheques, his sale deeds and other documents which are lying with him. The complainant agreed to the said compromise and stated before the Court that he is ready to accept ₹7.5 Lakhs from the accused as full and final settlement and he will also return cheques, sale deeds and other documents to the accused. Learned counsel for the applicants argued that it amounts to admission of the liability, whereas the learned counsel for the respondent argued that the respondent/accused agreed to pay ₹7.5 Lakhs only to take back the copies of sale deeds, other documents and the cheques, which are lying with the present complainant. As the complainant has not returned the documents, therefore, the compromise failed.

The learned trial Court on this statement found that the statement of the counsel for the complainant that the documents, cheques and sale deeds will be returned supports the defence version where the accused states that one Pushpinder Kaushal has given the blank cheques etc. to the present complainant. The defence of the accused that he had given 8 blank signed cheques to Pushpinder Kumar for sanctioning of some loan which he gave to the complainant and these cheques have been misused and the proceedings have been initiated by the accused against Pushpinder Kaushal.

From the record, I find that the findings given by the trial Court on this point are correct as per evidence and law. Further from the record, I find that no particulars of any liability have been mentioned on which date, month or year the liability arose and as to how it arose; whether the amount was advanced to the accused or it arose due to some other reasons. Even there is no mention as to how much money was advanced etc. to the accused. There is no date as to when the amount was demanded back. No security documents were obtained from the accused. No receipt was taken at the time of advancing such a huge amount. There is no document on record to show these loan transactions. In other words, there is nothing on record to show anything regarding the liability. Therefore, this is itself fatal to the complainant case as per law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028. It is settled law that the presumption under Section 139 of the NI Act can be rebutted by raising a probable defence and the accused has raised the probable defence which is duly supported and corroborated from the defence evidence as well as case of the complainant itself. Otherwise also, if the complainant will not give any particular regarding the liability, it is impossible for the accused to repay as no such liability arose. In the present case, neither any particulars of any type were given as to how the liability arose nor there is any document of any type to show these transactions. The defence raised by the accused/respondent is probable one. Therefore, the presumption has been duly rebutted by the accused/respondent by raising a probable defence from the case of the complainant as well as the defence evidence.

From the record, I find that the findings given by the learned trial Court 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. 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 appeals. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378 (4) Cr.P.C. seeking leave to file appeals, the same are dismissed.

April 04, 2019. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No