

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-673-MA of 2016

.....

Date of decision:11.02.2019

M/s Kalsi Agriculture Works (Regd.)

...Applicant

v.

Bhinder Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Raman Deep, Advocate for the applicant.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Bhinder Singh for grant of leave to appeal against the impugned judgment dated 10.2.2016 passed by learned Judicial Magistrate Ist Class, Samana, 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 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 it would be in the interest of justice that leave to appeal be granted and the appeal be heard on merits in the interest of justice, equity

and fair play. 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, the accused in discharge of his debts and liabilities issued cheque No.057341 dated 21.5.2013 for ₹3,40,000/- drawn on Oriental Bank of Commerce, which on presentation for encashment was returned back with the remarks “funds insufficient”. Legal notice was given. When the amount was not paid within the statutory period, the complaint was filed.

The Dharinder Singh-special power of attorney of the complainant examined himself as CW-1 and also got examined Karam Singh-complainant as PW-2 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. He did not examine any witness in defence.

The learned Judicial Magistrate Ist Class, Samana, vide impugned judgment dated 10.2.2016 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 record, I find 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. The complainant in the complaint has nowhere mentioned the particulars of the liability on which date, month or year and at which place and in whose presence what amount has been given to the accused or as to how the liability arose against the accused. No security document or receipt has been obtained for the loan. There is also nothing on record as to for what purpose the amount was given to the accused. Nothing has been mentioned as to when the loan was demanded back. As per the complainant, this cheque was issued to discharge the debts and liability by the accused. It is nowhere mentioned that the liability was much more than ₹3,40,000/- or the cheque was issued in partial discharge of the liability. PW-2 Karam Singh has admitted in the cross-examination that the father of the accused had paid ₹3,40,000/- to him but deposed that it was paid as interest on 11.3.2013. A perusal of the complaint nowhere shows that there was any agreement to pay the interest etc. Again CW-1 Dharminder Singh in his cross-examination has submitted that Novelty Finance Company Limited paid ₹3,60,000/- on behalf of the accused to the complainant firm i.e. M/s Kalsi Agriculture Works (Regd.).

Learned counsel for the complainant submitted that the liability was much more than ₹13 Lakhs but no such other facts have been pleaded in the complaint. A perusal of the record shows that much more amount than the cheque amount has already been paid by the accused to the complainant. Therefore, the accused has raised a probable defence which is duly supported and corroborated from the case of the complainant itself.

[4]

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 11, 2019.

(Inderjit Singh)
Judge

hsp

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