

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-2419-MA of 2017

.....

Date of decision:08.03.2019

Deep Chand Jain

...Applicant

v.

Pardeep Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajinder Goyal, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Pardeep Kumar for grant of leave to appeal against the impugned judgment dated 20.9.2017 passed by learned Additional Sessions Judge, Kaithal, vide which the appeal against judgment of conviction dated 25.2.2016 and order of sentence dated 26.2.2016 passed by the learned Judicial Magistrate Ist Class, Kaithal, whereby appellant-accused was held guilty for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and sentenced to undergo rigorous imprisonment for two years and further a compensation to the tune of ₹15,00,000/- under Section 357(3) Cr.P.C. has been awarded to the complainant and accused has been directed to pay compensation to the complainant within one month from the date of

passing of order, has been allowed 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 the impugned judgment passed by the learned Additional Sessions Judge, Kaithal is totally illegal, suffers from material irregularities, perverse and is liable to be set aside and that of trial Court deserves to be upheld. It has been mentioned that the guilt of the respondent-accused in commission of offence under Section 138 of the NI Act is well proved from the oral as well as documentary evidence available on the record. 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 case as mentioned in the complaint are that the complainant and the accused were fast friends, therefore, the complainant used to help the accused by giving loan from time to time. Accused Pardeep Kumar used to do the business of sale and purchase of the property. Even the complainant helped the accused by giving agricultural income to him and also borrowed loan from his wife for giving loan to the accused so that he may come out of the difficulties. The complainant advanced total loan amount of ₹14 Lakhs to the accused. Accused issued cheque No.005601 dated 5.10.2011 for ₹14 Lakhs. On 6.1.2012, the complainant presented the said cheque for payment to IDBI Bank, Kaithal, but the same was returned dishonoured with the remarks “account closed”.

Legal notice was given. When the amount was not paid, the complaint was

filed.

The complainant examined CW-1 Sunil Kumar, Assistant Manager, IDBI Bank, Kaithal, CW-2 Parveen Kumar Clerk, SBOP, Kaithal, CW-3-complainant himself and CW-4 Advocate Sh. Gian Chand Gupta 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.

In defence, the accused got examined DW-1 Sumit Kumar, Assistant Superintendent Jail, Kaithal, DW-2 Shamsheer Singh Malik, Handwriting and Fingerprint Expert and DW-3 Pardeep Kumar, Ahlmad.

The learned Judicial Magistrate Ist Class, Kaithal, vide judgment and order dated 25.2.2016/26.2.2016 after appreciating the evidence convicted and sentenced the accused as mentioned above. Aggrieved from the said judgment, the accused filed appeal before the learned Sessions Judge, Kaithal, which was allowed vide judgment dated 20.9.2017 passed by the learned Additional Sessions Judge, Kaithal and acquitted the accused. Aggrieved from the impugned judgment passed by the learned Additional Sessions Judge, Kaithal, 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 record, I find that first of all no date or month has

been mentioned as to when the loan was given to the accused. There is no document on record to show the loan transaction. No security document or receipt was obtained at the time of advancing such a huge amount. Furthermore, no date has been mentioned as to when the loan amount was demanded back. Furthermore, the complainant also failed to produce any loan document. The complainant stated that property of his wife was sold in the year 2007 but the alleged loan was stated to be given after many years. The complainant has also stated in cross-examination that he had been unemployed from the year 2006 to 2010. There is no document on record to show that there is sufficient agricultural land. Otherwise also, it looks unnatural that the sale consideration of the sale deed of 2007 will be kept at home for such a long period. As no particulars have been mentioned and there is no document on record to show the sale consideration, therefore, this case is fully covered under the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028.

A perusal of the findings given by the learned appellate Court shows that these findings have been given after appreciating the evidence in right and proper perspective. In no way, these findings can be held as perverse or against the evidence and law. 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 by the appellate 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.

March 08, 2019.

(Inderjit Singh)
Judge

hsp

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