

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-210-MA of 2015

.....

Date of decision:14.05.2019

Anil Kumar

...Applicant

v.

Karamvir Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ram Kumar Saini, 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 Karamvir Singh for grant of leave to appeal against the impugned judgment dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Safidon, 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 the learned trial Court has erred in acquitting the respondent. It has also been stated that the findings of the learned trial

Court are based on surmises and conjectures and are contrary to law and evidence on the file. 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 borrowed a sum of ₹3 Lakhs orally from the complainant for domestic purposes on 10.10.2012. In lieu of this advance, accused issued cheque No.220861 dated 24.12.2012 in favour of complainant. The complainant deposited this cheque for collection with Punjab National Bank, Safidon, but the same was returned unpaid with the remarks "account closed" vide memo dated 28.12.2012 of HDFC Bank. Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined Surinder Kumar Soni (Officer, PNB, Safidon) as PW-1, Anil Kumar-complainant himself as PW-2 and Ravinder as PW-3 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 examined Constable Devender Singh as DW-1 and Satender Pal as DW-2.

The learned Judicial Magistrate Ist Class, Safidon, vide impugned judgment dated 27.11.2014 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.

As per record, the accused produced DW-1 Constable Devender Singh No.1299, who brought the summoned record from the Police Station and proved on file DDR Ex.DW.1/A dated 18.9.2012. As per this DDR, which was recorded on the statement of accused Karambir Singh, he has averred that his cheque book of account of HDFC Bank has been misplaced. It has specifically been mentioned that the cheque book contained cheques of the serial Nos.220856 to 220865. The number of present cheque is 220861.

A perusal of the record shows that the DDR has been registered even before the advancement of loan as stated by the complainant. In view of the copy of the DDR, the presumption under Section 139 of the NI Act has been duly rebutted. Further more, there is no document to show the loan transaction.

Keeping in view the above facts, I find that the findings given by the trial Court are correct as per evidence and law. The findings given by the learned 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.

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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.

May 14, 2019.

(Inderjit Singh)
Judge

hsp

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