In the High Court of Punjab and Haryana at Chandigarh

......

Criminal Misc. No.7854 of 2014
and
Criminal Misc. No.A-348-MA of 2014

.....

Date of decision:25.01.2019

Anand Electronics

...Applicant

v.

Jarnail Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Navdeep Chhabra, Advocate for the applicant.

......

Inderjit Singh, J.

Cr. Misc. No.7854 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 51 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-348-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Jarnail Singh for grant of leave to appeal against the impugned judgment dated 7.11.2013 passed by learned Sub Divisional Judicial Magistrate, Garhshankar, 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.

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

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 acquitted the respondent without going through the facts of the case and law applicable to the present case and without considering the evidence. The order of acquittal is based upon conjectures and surmises and hence is liable to be set aside. 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 M/s Anand Electronics through its proprietor Rakesh Anand filed complaint against Jarnail Singh under Section 138 of the NI Act. The brief facts of the case are that the accused in order to discharge his legal liability, issued cheque No.370457 dated 16.8.2011 for a sum of ₹2,18,750/- of UCO Bank in favour of Anand Electronics, which on presentation for encashment was returned back with the remarks “payment stopped by drawer”. Legal notice was given. When the amount was not paid, the complaint was filed within statutory period.

Rakesh Anand, Proprietor of complainant-Anand Electronics examined himself as CW-1 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 his defence accused has taken plea to the effect that he is innocent and falsely implicated in this case. He has no liability towards the complainant. The present complaint is false one and the documents filed by

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

the complainant are also false and manipulated one. The matter of the fact is that complainant Anand Electronics is running a business of distributor and supplying various kinds of electronic goods of different companies to different dealers and firms. He has been running the shop of electronics at Adda Kahanpur Khuki, Tehsil Anandpur, District Ropar, since last about four years. In about four years back there was dealing struck orally between him and complainant that the complainant will supply various electronic goods to his shop along with all schemes granted/issued by the concerned companies of electronic goods. At the time of dealing, the complainant demanded 22 blank cheques in condition after duly signed by him. As per the dealing, the complainant first supplied the electronic goods and he after selling the same, paid the bill of the complainant. So, the complainant took 22 blank cheques; 10 cheques of UCO Bank, 4 of Vijay Bank, 4 of Hoshiarpur Central Cooperative Bank. After duly signed by him as security, he had been regularly paying the bill to the complainant after selling the electronic goods. Till date, total electronic goods supplied by the complainant of price about ₹2,65,910/- vide bill No.1971 dated 29.4.2010, 2092 dated 21.10.2010, 2094 dated 21.10.2010, 2095 dated 21.10.2010, 2091 dated 21.10.2010 and the complainant paid ₹2,57,900/- vide different receipts vide receipt No.410 dated 22.2.2010, 427 dated 8.3.2010, 443 dated 16.3.2010, 470 dated 29.3.2010, 471 dated 30.3.2010, 483 dated 5.4.2010, 377 dated 9.2.2010, 813 dated 21.10.2010, 814 dated 21.10.2010, 815 dated 21.10.2010, 847 dated 8.11.2010, 848 dated 8.11.2010, 511 dated 19.4.2010, 5430 dated 19.4.2010, 548 dated 3.5.2010, 555 dated 10.5.2010, 595 dated 31.5.2010, 606 dated 7.6.2010, 647 dated 28.6.2010, 665 dated

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

12.7.2010, 709 dated 9.8.2010, 723 dated 16.8.2010, 785 dated 4.10.2010, 1381 dated 8.8.2011, 1315 dated 4.7.2013, 1136 dated 14.4.2011, 959 dated 17.1.2011, 1144 dated 19.4.2011, 1007 dated 14.2.2011. In July 2011, he asked to complainant that he wants to start business with another distributor, so the complainant should settle total amount with him. But the complainant started to make false excuse and linger on the matter. He demanded above said cheques which were retained by the complainant as his security but the complainant told to him that he will return the same after searching the same as the same are misplaced somewhere in the record. That now the complainant filed false complaint against him by misusing the one cheque out of above said cheques which he had taken as security, there is no due of the complainant towards him as per the publicity poster supplied by the complainant to him, he promised to gift a wrist watch and other scheme as per the schemes issued by the concerned companies, but, the complainant did not pay any amount of the said schemes nor supplied said gifts. He never issued the cheques in dispute to the complainant as alleged by the complainant. In this defence, the accused has not examined any witness.

The learned Sub Divisional Judicial Magistrate, Garhshankar, vide impugned judgment dated 7.11.2013 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.

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

A perusal of the record shows 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. There is nothing on the record to show that the findings are against the evidence or law.

A perusal of the record further shows that no particulars regarding transaction have been mentioned in the complaint by the complainant. A perusal of the record shows that no date has been mentioned and no particulars have been mentioned in the complaint as to when the articles were supplied and how much articles were supplied and vide which bills the articles were supplied. Even during the evidence, the complainant has not produced the bills, ledger etc. to show the transaction. The complainant while appearing in cross-examination has stated that he cannot tell the number of bill books from which he has issued the bills to the accused. He is not in possession of the said bill books as the same might have been destroyed. Similarly, he stated that he is not in possession of any calculation. He used to obtain the signatures of the accused in the bill books when used to supply goods on the carbon copy. He never calculated any amount regarding dues towards the accused after going through the said bill book and cash receipts. He is not in possession of any calculations of the same. Though, the accused has placed one calculation of the file, which is neither exhibited nor proved by the complainant. He further stated that he cannot produce the ledger book after taking time to place the same on

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

record because of the shortage of time. He also stated that he had received some other payments also after receiving the cheques from him but the same has not been disclosed by him in his evidence.

Keeping in view all these facts and circumstances, I find that the present complainant is a distributor and supplying electronics goods to various shops etc. It canot be believed that he is not maintaining any record. If no ledger or bill books are with him, then as to how he calculated the amount regarding the liability. All these facts make the version of the accused probable one. The presumption under Section 139 of the NI Act can be rebutted by raising a probable defence. The accused has been duly rebutted the presumption under Section 139 of the NI Act from the case of the complainant itself as well as from the defence evidence. 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 25, 2019.

(Inderjit Singh)
Judge

hasp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No

HARPAL SINGH PARMAR
2019.03.12 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh