

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.8829 of 2014
and
Criminal Misc. No.A-411-MA of 2014

.....

Date of decision:03.04.2019

M/s Sucha Singh Sushil Kumar

...Applicant

v.

Darshan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Parminder Singh, Advocate for the applicant.

Mr. Pankaj Bali, Advocate for the respondent.

.....

Inderjit Singh, J.

Cr. Misc. No.8829 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 33 days in filing the application seeking leave to appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-411-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Darshan Singh for grant of leave to appeal against the impugned judgment dated 2.12.2013 passed by learned Judicial Magistrate Ist Class, Karnal, 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 given benefit of doubt to the respondent/accused just on the ground that the prosecution has not been able to bring home the guilt of the accused beyond shadow of reasonable doubt. It has been mentioned that the applicant shall suffer irreparable loss and injury if the special leave to file appeal may not be granted in favour of the applicant. 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 complaint are that the complainant was doing the business of Commission Agent under the name and style of M/s Sucha Singh Sushil Kumar. The accused, being an agriculturist, used to sell his agricultural produce at the shop of complainant. The accused through Sucha Singh, father of the complainant, requested the complainant to lend some financial help. The accused used to take loan from the complainant-firm from time to time. On 7.7.2008, an amount of ₹6,83,358/- was found to be due towards the accused. It was in discharge of his liability, the accused issued cheque No.079362 dated 7.7.2008 for ₹6,83,358/- drawn at Punjab & Sind Bank, Karnal in favour of the complainant, which on presentation for encashment was returned back with the remarks "insufficient funds". Legal notice was given. When the amount was not paid, the complaint was filed within the statutory period.

The complainant examined Gurcharan Singh, official of Punjab & Sind Bank, Karnal as CW-1. The complainant examined himself as CW-2. During cross-examination, the complainant tendered the partnership deed Ex.CW.2/A and record maintained at complainant firm Ex.CW.2/B. He deposed that 'J'-Forms Exs.D.1 to D.24 were issued by his firm, but denied issuance of receipts Mark-DA to Mark-DF. Legal notice dated 27.8.2008 Ex.C.4/A was also admitted by the complainant.

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 examined Paramjit Singh, Senior Manager, Punjab & Sind Bank, Karnal as DW-1.

The learned Judicial Magistrate Ist Class, Karnal, vide impugned judgment dated 2.12.2013 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.

Notice of motion was issued in this case.

Mr. Pankaj Bali, learned Advocate has appeared for the respondent and contested this application.

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

A perusal of the record specially the impugned judgment shows that the findings have been given by the trial Court after appreciating the evidence in right and proper perspective. In no way, the 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 given by the learned trial Court are as per evidence and law.

A perusal of the record further shows that in the complaint no specific particulars were given on which date, month or year how much amount has been given. No account books have been produced by the complainant to show this loan transaction. Furthermore, there is nothing on record to show as to how much money has been borrowed by the accused and how much crop he has sold to the complainant. No documents showing the signatures or thumb impression of the accused at the time of borrowing the loan have been produced by the complainant. Adverse inference is to be taken from the complainant. Furthermore, it will support the defence version that he is not under liability to pay this amount.

A perusal of the record shows that even nothing has been mentioned in which year how much money has been taken by the accused and how the value of the crop sold by him and how this money has been calculated. The computer statements without any certificate and other evidence of any type for corroboration from the account books cannot be looked into and will not prove the loan transaction.

The learned counsel for the applicant argued that there are income-tax returns showing the loan amount to be taken from the accused.

These calculations in the income-tax returns are the documents in ones own

[5]

favour. If the loan has been given, then the complainant is to prove the account books maintained in regular course of business. The defence of the accused is that signed cheque in question was stolen from the shop of the complainant and it was a blank cheque which has been misused.

The learned trial Court in view of the evidence on record found that the complainant belongs to business fraternity and accordingly, it was expected from him that he must be maintaining day book or ledger account of the accused in ordinary course of his business. But this recourse has not been proved. He has not proved that the accused has put his signatures or thumb impressions after taking the amount in any account book.

The learned trial Court after appreciating the evidence acquitted the accused rightly and correctly. Keeping in view the above facts, I find that 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.

April 03, 2019.

(Inderjit Singh)
Judge

hsp

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