

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-497-MA of 2015

.....

Date of decision:25.01.2019

Gurdeep Singh

...Applicant

v.

Charanjit Bhatti

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Vijay Lath, 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 Charanjit Bhatti for grant of leave to appeal against the impugned judgment dated 3.1.2015 passed by learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, 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 her.

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 wrongly acquitted the respondent-accused of the notice of accusation and the complaint of the

applicant has been dismissed. It has been stated that the impugned judgment has caused grave injustice to the applicant-complainant. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

It has been stated in the complaint that the complainant is brother-in-law (Devar) of the accused and had good relations earlier. Accused Charanjit Bhatti, widow of the elder brother of the complainant was also having cordial relations with the accused and they were the members of joint family. The complainant further averred that there was a land in the name of his brother Nachhattar Singh Bhatti, now in the name of Ramandeep Singh Bhatti, wherein a poultry farm has been raised by the complainant after spending a huge amount. He even raised poultry shed and kept about 10,500 birds after raising a loan to the tune of ₹10 Lakhs from Indian Overseas Bank in his own name. But due to strained relationship between the parties, a family settlement took place whereby the accused took the charge of poultry farm and agreed to give a sum of ₹20,50,000/-. In lieu to the same, the accused issued cheque bearing No.0008569 dated 7.2.2008 of the above said amount, 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.

The complainant examined himself as CW-1 and deposed as per the complainant's version.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and she was confronted with the evidence of the complainant, but she denied the correctness of the same and

pleaded herself as innocent.

To rebut the evidence of the complainant, the accused examined one Gurmej Ram, summoned witness from Central Bank of India as DW-1, who brought the summoned record pertaining to the saving bank account of accused Charanjit Bhatti and stated that it was opened in the year 2000 and closed on 20.2.2008. He furnished the account statement on record vide Ex.D.2. DW-2 Gurmit Singh was examined, who furnished his duly sworn affidavit vide Ex.DW.2/A. The accused also tendered in defence copies of judgment Ex.D.8, decree sheet Ex.D.9, copy of order Ex.D.10, copy of notice Ex.D.11, certified copy of reply to notice Ex.D.12, certified copy of judgment dated 14.8.2014 Ex.D.13, decree sheet Ex.D.14.

The learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, vide impugned judgment dated 3.1.2015 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 record, I find that first of all there are no particulars regarding any family settlement as to when it took place. There is no date mentioned as to when the loan was taken and when the construction of poultry farm was started etc. These are only oral averments which have been denied by the accused by stating that Gurdeep Singh Bhatti had never raised any poultry farm on the property of the husband of Charanjit Bhatti and rather the said construction was raised by Nachhattar Singh. As per the

defence version, the complainant has strained relation with the accused and other family members. Brother of the complainant has also come to the witness box in support of the accused which shows that the blank signed cheque was misused by the present applicant. Furthermore, the complainant admitted in cross-examination that he had raised a loan on the poultry farm constructed on the land of Ramandeep Singh Bhatti and criminal case qua the same is pending. He admitted that he had not repaid the said amount. He also admitted that his relationship with his other brothers and accused Charanjit Bhatti are not cordial since April 2008. He admitted that the loan amount raised on the mortgage of poultry farm is due against him though the said poultry farm is with accused Charanjit Bhatti and she is not repaying the same. This entire cross-examination supports the defence version. Further in cross-examination, the complainant admitted the factum of Charanjit Bhatti being residing in Delhi since 1985, though visits their village. During his cross-examination, he admitted that two family settlements had taken place between him and other family members including accused Charanjit Bhatti but no such document has been placed on record. The accused has raised a probable defence.

Keeping in view the facts and circumstances of the present case and in the absence of document to support the complainant's version, the defence of the accused is probable one and the presumption under Section 139 of the NI Act has been duly rebutted by raising probable defence. 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

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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.

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**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |