In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-572-MA of 2017

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Date of decision:24.01.2019

Ram Singh

...Applicant

v.

Vishnu Sharma

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.K. Tripathi, 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 Vishnu Sharma for grant of leave to appeal against the impugned judgment dated 4.2.2017 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed under Sections 138, 141 and 142 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 applicant is directly affected by the decision of the case and, therefore, pray for grant of special leave to file the appeal. 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 given in the complaint are that the complainant and the accused have friendly relations, the accused had borrowed an amount of ₹7 Lakhs from the complainant in cash to meet out his personal requirements and business progress with assurance to repay the borrowed amount within a short period. In order to discharge his legal liability, the accused issued two cheques No.170866 dated 20.3.2015 for ₹5 Lakhs and No.170868 dated 24.3.2015 for ₹2 Lakhs in favour of the complainant. The cheques when presented for encashment, cheque for ₹5 Lakhs was returned back with the remarks "payment stopped by drawer" and the cheque for ₹2 Lakhs was returned back with the remarks "insufficient funds". Legal notice was given. When the amount was not paid, the complaint was filed within statutory period.

The complainant examined himself as CW-1 and tendered documents i.e. cheque return memos, copy of legal notice, postal receipt and return of envelope. He also examined CW-2 Deepti, Manager, Axis Bank, CW-3 Syed Basharat, Executive, Jammu & Kashmir Bank, Main Gurgaon 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, he examined DW-1 Kamal Singh, who stated that he has seen Mark-B, which bears his signatures and his photo and he also proved his signatures on point-A. He also stated that GPA dated 24.3.2015 was registered by Sub-Registrar at Noida. He sated that he usually goes to the shop of accused and is having transaction with the accused. He stated that on 24.3.2015 when they went to get registered the GPA, accused handed over a cheque amounting to ₹2 Lakhs to the complainant. He stated that he was told that cheque of ₹5 Lakhs has already been given. He stated that after registration of GPA, they came back to the home and, thereafter, accused had given ₹7 Lakhs in cash to the complainant and when the complainant was asked to return both the cheques, the complainant stated that he would hand over the same on the next day.

The learned Judicial Magistrate Ist Class, Gurgaon, vide impugned judgment dated 4.2.2017 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 in the cross-examination, the complainant stated that he has been acquainted with Vishnu for 8-10 years. The complainant is having plot in Shiv Vihar, which he had sold to Vishnu for sale consideration of ₹30 Lakhs. He also stated that he has executed a GPA but no sale deed is executed till date. He again stated that GPA was registered and is Ex.D.1. He has seen Ex.D.2 which is agreement to sell. He also stated that as per Ex.D.2, he has received ₹15 Lakhs on 25.11.2014. He stated that he had made endorsement Ex.D.3 in his writing on the back of Ex.D.2. He also stated that as per endorsement, he extended the period of execution of sale deed upto 20.3.2015. He also stated that as per endorsement, till that date he has received ₹18 Lakhs and a cheque of ₹7 Lakhs. He admitted his signature on Ex.D.1. He admitted that Ex.D.1 is not registered. He stated that Sunil Kumar is son of his brother-in-law. He denied that in May 2015, CW-1 was missing for 10-12 days without giving information to anyone. He voluntarily stated that he had informed at his house. He admitted that till May 2015 he has received ₹23 Lakhs for plot and payment of ₹7 Lakhs is left as balance. He stated that Vishnu had called son of his brother-in-law for giving ₹7 Lakhs and on that day, he was not in Gurgaon. He also stated that on that day, his wife had also gone to the house of Vishnu and Vishnu along with his companions had broken the leg of son of his brother-in-law and snatched his chain. He also stated that FIR Ex.D.4 was also registered against Vishnu and his companions. He stated that the settlement were also carried out in Police Station. He denied that he was not having any relation with Vishnu. He also denied that Vishnu had never taken any friendly loan from him. He also denied that on 20.5.2015, his wife and son of his brother-in-law went to the house of the accused and after being threatened the accused gave two signed cheques of ₹7 Lakhs. He denied that on 20.5.2015, he lost himself without informing his family members. He denied that a missing report is also registered. He denied that he is avoiding sale deed of plot that is why Vishnu is not giving ₹7 Lakhs and had stopped the payment of the cheques as the cheques were taken forcibly by Sunil and his wife.

After going through this cross-examination, I find that there is no such transaction regarding giving of loan to the accused due to friendly relation by the complainant. No date, month or year has been mentioned on which date this loan was borrowed by the accused. Rather, a perusal of the cross-examination of the complainant shows that the accused had already paid ₹23 Lakhs in the transaction of purchasing the plot from the complainant and ₹8 Lakhs sale consideration is left which was demanded by other family members of the complainant. Even if it is presumed that there was any transaction of ₹7 Lakhs, when an amount ₹23 Lakhs has been paid by the accused to the complainant as to why this loan amount was not adjusted for the liability. The complainant has already received ₹15 Lakhs on 25.11.2014 from the accused as earnest money of the plot. He has further received ₹8 Lakhs from the accused and total ₹23 Lakhs upto May 2015. All this cross-examination shows that there was no loan transaction between the parties. Rather, the dispute is regarding the agreement to sell and earnest money and sale deed. The presumption under Section 139 of the NI Act has been duly rebutted from the case of the complainant itself.

Therefore, from the above, I find that the findings given by the trial Court, in no way, 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. Furthermore, there are no particulars of any type regarding the loan transaction. 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 24, 2019. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No