

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.14436 of 2017
and
Criminal Misc. No.A-927-MA of 2017

.....

Date of decision:24.01.2019

Kiran Bala

...Applicant

v.

Mukhtiar Chand

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Parvez Chugh, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.14436 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 16 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-927-MA of 2017:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Mukhtiar Chand for grant of leave to appeal against the impugned judgment dated 8.2.2017 passed by learned Sub Divisional Judicial Magistrate, Guruhar Sahai, vide which the complaint filed under Section 138 read with Section 142 of the Negotiable

Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and Section 420 IPC 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 impugned judgment of the learned lower Court is contrary to law and facts and the same is not sustainable in the eyes of law. It has been stated that judgment of acquittal of the accused/respondent has caused grave miscarriage of justice. 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 are that the complainant and accused are knowing to each other, as the accused was a customer at the commission agency shop of the husband of the complainant and the accused required a loan and for that purpose, he approached the complainant. The accused borrowed an amount of ₹2 Lakhs from the complainant and on the demand of aforesaid amount by the complainant, the accused issued a post-dated cheque bearing No.731127 dated 20.11.2012 for ₹2 Lakhs in favour of the complainant in discharge of his legal liability to pay the aforesaid amount. The complainant presented the cheque for its encashment before the banker of the accused, which was dishonoured and returned back with the remarks "payment stopped by drawer". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined herself as CW-1 and tendered in evidence the cheque in question, memo, legal notice, postal receipt, postal

envelope and acknowledgement.

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. The accused stated that he has not issued any cheque in favour of the complainant to discharge his legal liability. In defence, the accused tendered certified copy of complaint titled as M/s Labha Ram V. Mukhtiar Chand as Ex.DX and statement of Surinder Kumar as Ex.DY.

The learned Sub Divisional Judicial Magistrate, Guruhar Sahai, vide impugned judgment dated 8.2.2017 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 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. The findings have been given after appreciating the evidence in right and proper perspective. Secondly, no particulars of loan transaction have been given as to on which date, month or year the loan was given. No receipt or security document was obtained by the complainant when the loan

of ₹2 Lakhs was given to the accused. There is no document to show loan transactions. No income-tax return has been placed on record. Furthermore, there is no date as to when the loan was demanded back. The capacity of the complainant to lend the amount is also not proved. Though, the complainant stated that she has agricultural land, but there is no such document on record to support her averments. Furthermore, the version of the complainant looks unnatural. When the husband of the complainant is a commission agent and the accused is their customer and in the complaint it has been mentioned that he used to sell his agriculture produce to the commission agency which further shows the transaction between them then why the wife of one of the partners of the firm will lend such a huge amount to the customer of the firm without obtaining any document or receipt even. It looks the version of the accused is probable that this cheque was with the commission agent i.e. husband of the complainant and his brother which was misused by filing the complaint by wife of the one of the partners. Otherwise also, this case is fully covered by the law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R. (Cr.) 1028. There is no reason or ground as to why the loan was not given by the commission agent that is husband of the complainant and they also maintained the record and the accused was also their customer and he is not supposed to deal with the wife of the partner of the firm and there is no cogent evidence on record that how the complainant was knowing the accused to that extent that she gave huge amount of ₹2 Lakhs without even getting executed any document. In these circumstances, I find that the version of the accused is probable one. The accused has rebutted the

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presumption by raising a probable defence which is supported and corroborated from the case of the complainant 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 24, 2019.

(Inderjit Singh)
Judge

hsp

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