

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.28500 of 2016
and
Criminal Misc. No.A-1647-MA of 2016 (O&M)

.....

Date of decision:13.02.2019

Ram Parvesh

...Applicant

v.

Anil Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

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Inderjit Singh, J.

Cr. Misc. No.28500 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 78 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1647-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Anil Kumar for grant of leave to appeal against the impugned judgment dated 5.1.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 applicant had obtained the said cheque fraudulently from him, rather the respondent has kept mum on this issue and the learned trial Court has also not discussed the same anywhere in the impugned judgment. The applicant has good *prima facie* case in his favour and balance of convenience also lies in his favour. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

It has been mainly stated in the complaint that in discharge of his existing liability towards the complainant, the accused had issued a cheque bearing No.697606 dated 23.4.2014 in the sum of ₹4 Lakhs, which on presentation for encashment was returned back with the remarks "drawer's signature differ/required". Legal notice was given. When the amount was not paid, the complaint was filed.

The complainant examined himself as CW-1 and tendered in evidence documents. The complainant in his additional evidence got examined Satpal CW-2 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, the accused examined DW-1 Ankur Kumar, Clerk of Oriental Bank of Commerce, who proved the authority letter as Ex.D.1 and statement of account of the accused related to the period 09.12.2004 to 6.7.2015 as Ex.D.2 and copy of cheque book issue register as Ex.D.3.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide impugned judgment dated 5.1.2016 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 no date, month or year has been mentioned as to when such a huge amount of ₹4 Lakhs was given to the accused. There are no other particulars regarding the liability mentioned in the complaint. There is nothing in the complaint as to whether the amount was paid in cash or by way of cheque; whether it was lying at his home or was withdrawn from the Bank. No receipt or security document of any type was got executed from the accused. Further, there is also nothing on record as to whether the amount was paid on interest or not. Furthermore, nothing is there in the complaint as to in whose presence and at which place the amount was paid. There is no document on record about this loan transaction. There is no income-tax return placed on record to show the transaction. The learned trial Court has rightly relied upon the law laid down by Hon'ble Supreme Court in Vijay v. Laxman, 2013(1) R.C.R.

(C.) 1028. Furthermore, the defence of the accused is that the complainant,

who was his neighbour, had taken two blank signed cheques with a copy of the ration card, voter card along with his two photographs on the pretext that these documents were required in the Bank for sanctioning of loan. He further stated that till date neither any loan was got sanctioned nor the documents including these cheques were returned and the cheque in question was fabricated. It is settled law that the presumption can be rebutted by way of raising of probable defence. In the present case, the accused has raised a probable defence. If the complainant is friend of the accused, they might be knowing that the accused has renovated his old house which is at a distance of 500 to 600 feet from his house. The complainant also stated that prior to the transaction in question, no other transaction ever took place between the parties. He further stated that he does not know whether the accused owns any land in his name or not. He also stated that there exists close relations between the parties to the complaint. From the cross-examination, it looks that there were no close relations but there are close relations then why he was not knowing that the house of the accused was renovated or not. Again the complainant relied upon some sale deed regarding the execution of the sale deed, but he does not remember the date of execution and registration of that sale deed. The complainant himself deposed that he has no proof with him which could prove that he had advanced an amount of ₹4 Lakhs to the accused in cash, nor he has any eye witness to prove this fact. He also deposed that he does not know from whom the accused had filled up the cheque in question. The accused has produced defence evidence in support of his defence version.

Keeping in view the findings given by the learned trial Court, I

find that these have been given as per evidence and law and, in no way, these can be held as perverse. Nothing has been pointed out as to how the findings are perverse or against the evidence and law. 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 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.

February 13, 2019.

(Inderjit Singh)
Judge

hsp

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