

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39538 of 2014 (O&M)
Date of Decision:03.07.2015

Hewlett Packard India Sales Pvt. Ltd. Etc.Petitioners

Vs

State of Haryana and anr.Respondents

CRM-M-12705 of 2014

Hewlett Packard India Sales Pvt. Ltd. Etc.Petitioners

Vs

State of Haryana and anr.Respondents

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Gaurav Chopra, Advocate and
Mr. Munish Mehra, Advocate
for the petitioners.

Mr. Rajesh K. Sheoran, Addl. AG, Haryana.

Mr. Vaneet Sharma, Advocate
for respondent No.2.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

CRM-M-39538 of 2014 (O&M)

- 1) Facts involved in the present petition are that the
petitioner No.1 is a company incorporated under Indian

Companies Act, 1956 and is involved in providing hardware and software related products and services to end consumers, small and medium size businesses and large enterprises. Petitioners No.2 to 7 are working with the petitioner No.1 in official capacity.

2) Respondent No.2 got registered FIR No.381 dated 09.06.2014 under Sections 420, 467, 467, 471, 120-B, 506 IPC, Police Station, Thanesar City, District Kurukshetra against the petitioners in respect of commercial transaction. After registration of the case, the controversy was amicably resolved between the parties as per terms and conditions of the agreement dated 29.10.2014, an amount of Rs.35 lacs was agreed to be paid to respondent No.2 as full and final settlement of monetary claim raised by him. Accordingly, in execution of settlement/agreement and consequence thereupon, an amount of Rs.30 lacs was paid by way of demand draft bearing No.877376 dated 28.10.2014 drawn on HDFC Bank in the name of Habiba Enterprises. The said amount was encashed by the respondent No.2. For ready reference, condition No.3, 4, 5, 6 and 7 of the agreement are reproduced as under:-

“3. Subject to handing over of the Demand Draft for Rs.35 lakhs to the Complainant, the Complainant hereby acknowledges and accepts the amicable settlement as specified above as full and final settlement of all his civil and criminal law based claim(s), rights, demands, debts,

obligations, and damages, against HP and HP Employees, past and present, with respect to the disputes/claims and/or cause of action arising out of the legal notice dated 11.2.2014, the complaint dated 17.6.2014 and FIR bearing No.381 of 2014 dated 19.6.2014, Police Station-Thanesar City, Kurukshetra, Haryana.

4. It is further agreed between HP, HP Employees and the Complainant/Complainant Firm that pursuant to and in consideration of the abovementioned payment of Rs.35 Lakhs, by HP to the Complainant, all disputes between HP,HP Employees and the Complainant, Complainant's Firm will duly, finally and irrevocably stand settled, concluded and there shall remain no dues, claim damages, costs etc. payable by HP and HP Employees on any account whatsoever in relation to the cause of action arising out of the legal notice dated 11.2.2014, the complaint dated 17.6.2014 and FIR bearing No.391 of 2014 dated 19.06.2014, Police Station-Thanesar City, Kurukshetra, Haryana inclusive of any attendant or related claims/complaints.

5. The Complainant hereby confirms that the instant settlement and Agreement has been entered into and executed by him without any coercion, undue influence, duress and of his own free will and consent and further that the said settlement and Agreement is to his full and final satisfaction.

6. The Complainant hereby acknowledges and undertakes that upon signing of this Agreement

and receipt of the Demand Draft, he will submit a copy of the present Agreement before the Kurukshetra Police without any delay and make an unequivocal statement before the Kurukshetra Police to the effect that he is satisfied with the terms and conditions of the present settlement and that he has no further claims against HP and HP Employees in relation to the legal notice dated 11.2.2014, the complaint dated 17.6.2014 and FIR bearing No.381 of 2014 dated 19.6.2014, Police Station-Thanesar City, Kurukshetra, Haryana. The Complainant further acknowledges and confirms that he shall provide all possible support and assistance to the Kurukshetra Police and Complainant to enable the preparation and filing of the cancellation of the FIR bearing No.381 of 2014 before the Learned Magistrate, Kurukshetra. The Complainant acknowledges and confirms that he shall make himself available before the Learned Magistrate on the date of presentation of the cancellation of the FIR by the Kurukshetra Police and all and any subsequent dates and suffer a statement before the Learned Magistrate that the said settlement has been entered into by him without any coercion, duress and of his own free will and that the same is to his full and final satisfaction.

7. The Complainant hereby acknowledges and undertakes that he and the Complainant Firm shall collectively and individually and fully support any quashing petition moved before the Punjab & Haryana High Court by HP and HP Employees

and fully support and shall do and take every reasonable step to support such a petition, including as may be required by personally appearing in the High Court of Punjab and Haryana for the purposes of and including the stage until of quashing of the FIR bearing No.381 of 2014. The Complainant further undertakes to provide an affidavit in support of the quashing Petition, if so filed by HP and HP Employees, and providing an unequivocal statement in the same to the effect that the instant Settlement Agreement has been entered into and executed by him without any coercion, undue influence, duress and of his own free will and consent and further that the said Settlement Agreement is to his full and final satisfaction and that there remain no dues, claim, damages, costs etc. payable by HP and HP Employees on any account whatsoever.”

3) The settlement was duly signed and acknowledged by both the parties and was duly acted upon between the parties. Respondent No.2 executed an affidavit dated 29.10.2014, affirming the factum of compromise and payment was also duly admitted towards full and final settlement of any and all claims, cause of action, damages, cost and attorney fee etc. Para No.3, 4, 5, 6 and 7 of the affidavit dated 29.10.2014 are also reproduced as hereunder:-

“3. I affirm that during the pendency of the police investigation into the said matter, I have provided certain documentation in support of my monetary claims as a Partner/Reseller to Hewlett Packard India Sales Private Limited (“HP”) and its authorized representatives, which documentation has been reviewed by HP. I affirm that HP (and HP on behalf of HP Employees), pursuant to internal review of the said documentation has entered into an amicable settlement with me vide a Settlement Agreement dated 29th October 2014 (“Agreement”) pursuant to which HP has agreed to pay to me a sum of Rs.35,00,000.00 [Rupees Thirty Five Lakhs] vide a Demand Draft. The said amount of Rs.35 Lakhs has been accepted by me as full and final settlement of any and all claims, cause of action, damages, costs and attorney fees which I have against HP and HP Employees.

4. I affirm that pursuant to the Agreement, all disputes between HP, HP Employees and me and my Firm M/s Habiba Enterprises finally and irrevocably stand settled, concluded and there remain no dues, claims, damages, costs etc., payable by HP and HP Employees to me on any account whatsoever in relation to the cause of action arising out of the legal notice dated 11.2.2014, the complaint dated 17.6.2014 and FIR bearing No.381 of 2014 dated 19.6.2014, Police Station-Thanesar City, Kurukshetra, Haryana inclusive of any attendant or related claims/complaints.

5. I affirm that I have entered into the Agreement and have executed the same without any coercion, undue influence, duress and of my own free will and consent and that the terms and conditions as contained in the Agreement are to my full and final satisfaction.

6. I affirm that I shall provide all possible support and assistance to the Kurukshetra Police to enable the preparation and filing of the cancellation of the FIR bearing No.381 of 2014 before the Learned Magistrate, Kurukshetra. I further affirm that I shall make himself available before the Learned Magistrate as and when required for the purposes of cancellation of the FIR by the Kurukshetra Police and suffer a statement before the Learned Magistrate that the said Agreement has been entered into by me without any coercion, duress and of my own free will and that the same is to my full and final satisfaction.

7. I affirm that I shall fully support any quashing petition moved before the Punjab & Haryana High Court by HP and HP Employees and fully support and shall do and take every reasonable step to support such a petition, including as may be required by personally appearing in the High Court of Punjab and Haryana for the purposes of and including the stage until of quashing of the FIR bearing No.381 of 2014 and shall submit an affidavit in support of such quashing petition as and when requested by HP and HP Employees.”

4) Petitioners sought quashing of aforesaid FIR on the basis of compromise. This Court vide order dated 21.11.2014, passed the following order:-

“Learned counsel, inter alia, contended that the parties have amicably settled their disputes, by means of compromise/agreement dated 29.10.2014 (Annexure P-2) and the criminal case registered against the petitioners in pursuance of impugned FIR (Annexure P-1) is liable to be quashed.

Heard.

Notice of motion be issued to the respondents, returnable for 16.12.2014.

Meanwhile, the Magistrate, having the jurisdiction, is directed to indicate (i) how many total accused are involved in this case, (ii) to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise/agreement dated 29.10.2014 (Annexure P-2) and (iii) to send its report to this Court before the next date of hearing.”

5) Thereafter, vide report dated 10.12.2014, Chief Judicial Magistrate, Kurukshetra informed that respondent No.2 Vipin Mehta has appeared before the Court and stated that settlement/agreement dated 29.10.2014 has been executed under pressure and after giving threat to kill. The agreement was

executed and signed at Gurgaon and in this connection he never visited Gurgaon nor purchased the stamp paper, used in the affidavit. Complainant alleged that they were called at Noida and he has already moved complaint to the Superintendent of Police, Kurukshetra. Complainant has not received full and final payment and he is not satisfied with the agreement. On receipt of report dated 10.12.2014, this Court passed an order dated 16.12.2014 to enable the complainant to return the amount of Rs.35 lacs. The order dated 16.12.2014 passed by this Court is also reproduced here as under:-

“Adjourned to 27.01.2015 for arguments and to enable the complainant, to return the amount of Rs.35 lacs, in case, he is not inclined to amicably settle the dispute with the petitioners, before the next date of hearing.”

6) In reply filed by respondent No.2, it has been stated that terms and conditions were already settled between the parties and were required to be reduced into writing and the agreement was required to be sent by the parties. On 29.10.2014, answering respondent No.2 received call from Munish Mehra, asking him to meet at Kurukshetra in respect of compromise. When respondent No.2 went there, he was made to sit in a car on the pretext that he was being taken to Gurgaon, where head office of the petitioner No.1 is situated, for finalizing the terms and

conditions of the compromise in writing. Instead of being taken to Kurukshetra, the respondent No.2 was taken to Noida where he was made to sign some documents forcibly and for this purpose, petitioner had also called a Notary Public from Gurgaon to give an impression that agreement had been entered into and signed at Gurgaon. Respondent No.2 protested that the conditions with regard to restoration of his agency and release of payment lying with Ingram Micro India Ltd. be made good as these were not incorporated in the written agreement. The respondent No.2 was coaxed that the petitioner will be done to death. Respondent No.2 was prescribed to sign the paper in this background.

7) Respondent No.2 also asserted that he gave complaint dated 19.11.2014 to the Superintendent of Police in respect of alleged compromise dated 29.10.2014 which was allegedly got signed by respondent No.2 under threat at Noida. When no action was taken by the police, respondent No.2 ventured to file the criminal complaint before the Chief Judicial Magistrate, Kurukshetra and on his direction, FIR No.137 dated 21.02.2015 under Section 420, 342, 384, 506, 120B IPC has been registered at Police Station, Thanesar City. In this way, the respondent No.2 opposed the petition for quashing of FIR on the basis of compromise.

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8) In this petition, petitioners seek quashing of order dated 18.02.2015 passed by Chief Judicial Magistrate under Section 156 (3) Cr.P.C. and consequent FIR No.137 dated 21.02.2015 under Sections 420/342/384/506/120-B IPC registered at Police Station Thanesar City, District Kurukshetra along with entire subsequent proceedings. The background in which the aforesaid FIR came to be registered has already been given in preceding paras with reference to reply filed in CRM-M-39538 of 2014. Therefore, the lodging of FIR No.137 dated 21.02.2015 has reasonable nexus with the earlier controversy forming subject matter of CRM-M-39538 of 2014. The aforesaid FIR has come in existence even after passing of order dated 21.11.2014 and 16.12.2014 passed by this Court in CRM-M-39538 of 2014.

Issue of compromise

9) Settlement/agreement attached as Annexure P2 highlighted that in consideration of instant settlement, amount of Rs.35 lacs shall be paid by way of demand draft in the name of Habiba Enterprises and shall be handed over to the complainant by the petitioner No.1 immediately following the signing and execution of present agreement. Other conditions have already been incorporated as reproduced in the preceding paras. Apparently, in compliance to the terms of agreement, demand draft was handed over to the respondent No.2 after signing the

execution of agreement. Admittedly, the amount has been encashed by the respondent No.2. Whence the amount has been encashed and no complaint before such encashment was filed, it can be taken to be the effect of acceptance of settlement and execution of such settlement. Thereafter, respondent No.2, after having acquiesced the factum of settlement, is stopped from raising any objection against the compromise.

10) When the matter was listed before this Court on 16.12.2014, the Court asked the respondent No.2 to return the amount of Rs.35 lacs in case he is not inclined to settle the dispute with the petitioners before the next date of hearing.

11) The amount was not returned and thereafter, respondent No.2 sought time to argue the matter and to seek further instructions. Till date, amount has not been returned. Respondent No.2 after having encashed the amount in question has turned round and projected a case of fraud and obtaining the signature of the respondent No.2 forcibly at Noida. It was well within the competence of respondent No.2 to resile from the compromise after returning the amount to the petitioners and to put the clock back to the position as existed before execution of settlement between the parties. It was not done, rather respondent No.2 intended to swallow the amount as well as to proceed with the FIR.

12) When this Court observed in respect of return of the amount in the order dated 16.12.2014, FIR No.137 dated 21.02.2015 under Sections 420, 342, 384, 506, 120B IPC, Police Station, Thanesar City, came to be registered on 21.02.2015. Apparently, lodging of this FIR is also in addition to evil design of the respondent No.2 in order to swallow an amount of Rs.35 lacs without adhering to terms and conditions of the compromise. Fair option was given to the respondent No.2 to back out from the compromise paying back the amount of Rs.35 lacs to the petitioner. Such backing out was conditional, subject to paying back the amount to the petitioner. Respondent No.2 did not avail that opportunity, rather went ahead to show his vendetta in lodging FIR No.137 dated 21.02.2015 during progress of earlier petition. Such an attitude of respondent No.2 cannot be endorsed by this Court. Respondent No.2 cannot be allowed to breathe hot and cold in the same breath.

13) The stand taken by respondent No.2 that his agency was to be restored and his outstanding amount lying with Ingram Micro India Ltd. (the national distributor of petitioner No.1) was to be paid to him. These facts could have been incorporated in the settlement. Apparently, the aforesaid claims have not been incorporated in the agreement/settlement and the same was executed. It was well within reach of respondent No.2 not to act upon the agreement/settlement by way of encashing the demand

draft, if he was not satisfied with the terms and conditions of the settlement. Once the amount under agreement was encashed, respondent No.2 cannot turn around and say that agreement/settlement is bad. Respondent No.2 is stopped from denying the veracity of agreement after acting upon terms and conditions of the same.

14) In **“Shlok Bhardwaj Versus Runika and others”** **2015 (1) RCR Criminal, 249**, the Hon'ble Apex Court, in matrimonial case, has held that once the matter was settled between the parties and the settlement was also given effect in the form of divorce by mutual consent, no further disputes survived between the parties, even though it was not expressly recorded in order. No such liberty was given to the complainant nor the same was reserved to continue the proceedings after settlement. In view of that it was held that wife was estopped from agitating and continuing the proceedings after entering into compromise and after giving effect to said compromise.

15) In FIR No.137 dated 21.02.2015 under Section 420, 342, 384, 506, 120B IPC, Police Station, Thanesar City, there is no mention about the receipt of 38 lacs. Rather in the complaint filed before the Magistrate it was averred that the complainant was forced to sign the factum of payment of Rs.38 lacs. This fact was conspicuously missing in the aforesaid FIR. Para 4 of the FIR is reproduced here as under:-

“4. That on 29.10.2014, accused persons made a telephonic-call to the complainant and called him at Mohan Nagar Chowk for the purpose of compromise regarding the dispute in question. The complainant reached at Mohan Nagar Chowk, Kurukshetra where the accused persons were already present and they forcibly put the complainant in the car and threatened him not to raise any hue and cry, otherwise he will be killed. Due to fear, the complainant did not raise any hue and cry and the accused persons took the complainant to Noida. Thereafter, the accused made a telephonic call to brother of the complainant and told him that they took away his brother i.e. the complainant to Gurgaon and asked him to come to Gurgaon. Thereafter, the accused persons made another telephonic call and asked the brother of the complainant to come to Noida instead of Gurgaon. On this brother of the complainant reached Noida, where all the accused persons were present and the complainant was in their custody.”

16) The story of signing the documents by complainant forcibly in respect of payment towards restoration of agency and balance payment of “Ingram Micro India Limited” has not been mentioned in FIR No.381 dated 19.06.2014 under Section 420, 467, 468, 471, 506, 120B IPC, Police Station, Thanesar City.

17) Even after compromise, brother of the complainant lodged FIR No.819 dated 21.11.2014 on the same allegations. CWP No.24369 of 2014 has already been filed by the petitioner, in which proceedings have been stayed. All the orders passed under Section 156(3) Cr.P.C. in FIR No.381, in FIR No.819 and in FIR No.136 are verbatim same and have been passed by the same Presiding Officer.

Conclusion

18) After considering the matter in depth, I have come to the conclusion that after receipt of payment of Rs.35 lacs and by not returning the same despite option given by the Court, the same amounts to acceptance of terms and conditions of the compromise. Since the compromise has been acted upon by the complainant himself by receiving the amount and by retaining the same, therefore, respondent No.2 has acquiesced the terms and conditions of the compromise and cannot be allowed to wriggle out of the same by alleging factum of restoration of agency and non-payment of dues Ingram Micro India Ltd. Respondent No.2 cannot be allowed to backtrack at this juncture, particularly when amount of Rs.35 lacs was not returned.

19) Powers under Section 482 are to be sparingly exercised. These powers can be exercised by the High Court (i) when there is failure of justice (ii) in order to prevent abuse of process of law (iii) in order to achieve ends of justice. In the

instant case, respondent No.2 cannot be allowed to have undue enrichment under the garb of the plea which does not form part of compromise. Respondent No.2 cannot have undue benefit and his conduct is despicable. He cannot be allowed to breathe hot and cold in the same breath. This Court is inclined to exercise inherent jurisdiction under Section 482 Cr.P.C. to prevent misuse of process of law. Petitioners cannot be left high and dry at this juncture particularly when they have already parted with an amount of Rs.35 lacs towards full and final settlement of all the dues of respondent No.2. Having accepted the same, respondent No.2 is estopped from running up the modified issue in subsequent FIR No.137 which is totally an abuse of process of law.

20) Consequently, both the petitions are allowed. FIR No.381 dated 09.06.2014 under Sections 420, 467, 467, 471, 120-B, 506 IPC, Police Station, Thanesar City, District Kurukshetra and FIR No. 137 dated 21.02.2015 under Section 420, 342, 384, 506, 120B IPC registered at Police Station, Thanesar City along with entire subsequent proceedings arising therefrom, are quashed.

**(RAJ MOHAN SINGH)
JUDGE**

July 03, 2015
SwarnjitS