

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-1211-MA-2016(O&M)
Date of decision:-17.5.2018**

Yash Pal Arora

...Applicant

Versus

Shyam Sunder Setia

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

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

Mr.S.P. Arora, Advocate
for the respondent.

H.S. MADAAN, J.

Applicant – Yash Pal Arora has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Yash Pal Arora had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Shyam Sunder Setia on the allegations that the latter had issued a cheque in the sum of Rs.6,50,000/- in favour of the former which on presentation was received back uncashed. Since the accused failed to make the payment of cheque amount within fifteen days of receipt of notice got served upon the accused, the complainant had brought a complaint in the Court of Judicial Magistrate Ist Class, Gurgaon.

After recording of preliminary evidence, accused was summoned, who put in appearance. The matter was taken up in the Lok

Adalat where the accused appeared and stated that he was ready to make the payment of the cheque amount but counsel for the complainant stated that the complainant was not ready to accept the cheque amount as accused was a habitual defaulter and a number of cases were pending against him. The Court directed the accused to pay the cheque amount of Rs.6,50,000/- besides Rs.30,000/- as legal expenses/compensation. The accused accordingly submitted a demand draft in the sum of Rs.6,50,000/- in favour of the complainant, which was received under protest by the counsel for the complainant. The accused had submitted a demand draft in the sum of Rs.30,000/- in favour of the complainant but the complainant did not accept the same and it was placed on the case file. However, learned Judicial Magistrate Ist Class, Gurgaon vide order dated 7.8.2015 observing that the entire cheque amount had been paid along with compensation, the continuation of criminal proceedings would not serve any useful purpose and would rather be an abuse of process of law, then vide order dated 19.8.2015, the Court observed that the matter stood compounded between the parties and acquitted the accused observing that the complainant would be at liberty to receive the demand draft from the case file.

The complainant had preferred a revision petition to the Court of Sessions, which was later on withdrawn.

The complainant feeling aggrieved has knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. It was filed belatedly by 222 days, as such an application under Section 5 of the Limitation Act has been filed.

I have heard learned counsel for the parties besides going through the record.

The present application seeking special leave to appeal is liable to be dismissed for several reasons. Firstly it is barred by limitation. There is a delay of 222 days in approaching this Court. Though an application under Section 5 of the Limitation Act has been filed for the reason that counsel engaged by the applicant was busy in some domestic matters, therefore, it could not be filed within time and further some objections had been raised by the Registry. I find the reasoning to be unconvincing.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

If for one reason or the other the counsel engaged by applicant was busy, he could have got it filed through some other counsel and delay cannot possibly be condoned for such like reasons. The application being barred by time is doomed for failure on that score alone.

Secondly, the matter had been decided in the Lok Adalat and such order or award passed cannot be challenged except on point of fraud etc. The applicant has neither pleaded nor proved any such fraud. The trial Court had decided the matter since the accused had shown his readiness and willingness to make the payment of cheque amount, whereas counsel for the complainant stated that the complainant was not ready to compromise the matter. It was observed that the complainant

wanted to use the Court as threat to get settled his other disputes which could not be allowed. It was noticed that the complainant had already received an amount of Rs.6,50,000/- vide demand draft bearing No.587722 dated 20.7.2015, though under protest and question qua the legal expenses remained to be decided. Adjudicating that point, accused was directed to pay a sum of Rs.30,000/- in addition to the cheque amount as compensation to the complainant, in view of the ratio of the authority **Subhash Chandra Makkar Versus Surinder Singh Bedi, 2014(5)RCR(Civil) 140** by this Court to the effect that the entire cheque amount had already been paid by the accused to the complainant, the continuation of criminal proceedings against the accused would not serve any purpose and would rather be an abuse of process of law. The accused had brought demand draft for the sum of Rs.30,000/-. The complainant had stated that he did not want receive the same, therefore the Court observed that there was no use of continuing with the present complaint and matter stood compounded between the parties, accused was acquitted. It was made clear that the complainant would be at liberty to receive the demand draft from the case file till 18.11.2015 or till the date the demand draft valid. Therefore, the revision petition against that order is not maintainable.

Furthermore the Apex Court in case **M/s Meters and Instruments Private Limited & Anr. Versus Kanchan Mehta, 2017(4) R.C.R.(Criminal) 476** in para No.19 held as under:

In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the

proceedings in exercise of its powers under [Section 143](#) of the Act read with [Section 258](#) Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under [Section 357\(3\)](#) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

As such, though no fault can be found with the order passed by the trial Magistrate, which might have called for interference by this Court and I do not see any reason to grant special leave to appeal.

The application is, therefore dismissed accordingly.

17.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No