

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

CRM No.A-254-MA of 2017 (O&M)

Date of decision: August 08, 2018

Batra Advertising through Sachin Batra, proprietor

...Applicant

Versus

Chandigarh Overseas Private Ltd. through its Managing Director and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Kant Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Batra Advertising through Sachin Batra, proprietor has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Chandigarh Overseas Private Ltd. through its Managing Director and Sagar Setia, challenging the impugned judgment dated 25.10.2016 passed by learned Judicial Magistrate Ist Class, Chandigarh, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that applicant would suffer an irreparable loss, if permission to file the appeal is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Batra Advertising through

Sachin Batra, proprietor filed a complaint against accused Chandigarh Overseas Private Ltd. through its Managing Director and Sagar Setia under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed learned JMIC, Chandigarh, are as under:-

“2. Brief facts of case of the complainant are that complainant company deals in the business of advertisement through hoarding boards. Accused approached the complainant for providing iron hoardings on rent in different areas of Punjab and Himachal Pradesh. Complainant provided 40 iron hoardings with flacks size 30' X 15” to the accused for their company Mona Township Private Limited under different projects @ Rs. 5,70,000/- per month. Thereafter, in order to discharge their financial liability, accused issued cheque bearing no.910821, dated 05.05.2015, amounting to Rs. 5,00,000/- and cheque bearing No.910832, dated 15.05.2015, amounting to Rs. 5,00,000/- drawn on IndusInd Bank Limited, Sector 32-C, Chandigarh, in favour of complainant. Complainant presented the cheques in question for encashment with its banker, but the same were dishonoured, vide memos dated 24.06.2015 and 09.07.2015, respectively with the remarks “Payment Stopped by Drawer”. Thereafter, complainant served legal notice dated 15.07.2015 upon the accused, calling upon them to make the payment of abovesaid amount within the stipulated period, but of no avail. Hence, the present complaint.

The complainant examined himself as CW-1 and closed the evidence. At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C and they were confronted with the evidence of the complainant. They denied the correctness of the evidence and pleaded their innocence and false implication. They also tendered into evidence documents Ex.D1 to D8.

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was requisitioned.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that it is admitted fact that during the pendency of the complaint, a compromise was effected between the parties. Copy of the compromise is Ex.R-5, which is also placed on record as Annexure P-3. As per this compromise between the parties, a settlement took place regarding two cheques of ₹5 lakhs each and ₹2 lakhs was paid on the day of compromise i.e. 17.09.2016. The remaining amount of ₹8 lakhs was to be paid till 24.09.2016 and it was the condition that if the accused fails to pay the remaining amount, then the complainant has right to forfeit ₹2 lakhs given at the time of compromise.

It is admitted by learned counsel for the applicant at the time of arguments that after paying ₹2 lakhs on 17.09.2016, ₹5 lakhs was paid on 24.09.2016 and further, ₹3 lakhs was paid on 03.10.2016, which were received by the present complainant. In the compromise, it was written that after complying with the compromise, the complainant will withdraw the complaint but the complainant has not withdrawn the same.

Depositing of ₹3 lakhs on 03.10.2016 i.e. after 7-8 days of the agreed period, will not be treated as violation of terms of compromise. Neither complainant refused the payment of ₹5 lakhs and ₹3 lakhs being violation of terms of the compromise nor he gave any notice regarding forfeiting the amount of ₹2 lakhs taken by him. Receiving of ₹5 lakhs on

condoned that condition of paying ₹8 lakhs on 24.09.2016. Otherwise also, this delay of paying the part amount of ₹3 lakhs after 7-8 days is not fatal to the accused's case, especially, when this amount has been accepted by the complainant without any objection.

Keeping in view the facts and circumstances of the present case and in view of the compromise effected between the parties and also the fact that complainant has already received the cheque amount in compliance of the compromise, this complaint should have been withdrawn by the complainant. Offence under Section 138 of the Negotiable Instruments Act is otherwise compoundable and legal compromise has been effected between the parties, which is complied with by the accused but by not withdrawing the complaint, the complainant has violated the terms of the compromise.

In view of the above facts, I find that judgment of acquittal of accused-respondent passed by learned Court below is correct, as per evidence and law and does not require any interference from this Court. No illegality has been committed by learned JMIC, Chandigarh while passing the impugned judgment dated 25.10.2016. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 08, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No