# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM No.A-2114-MA of 2017 (O&M)**
**Date of decision: January 14, 2019**

Boettcher India Pvt. Ltd.

...Applicant

Versus

M/s Anjali Enterprises and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Ashok Tyagi, Advocate
for the applicant.

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**INDERJIT SINGH, J.**

Applicant-Boettcher India Pvt. Ltd. has filed this application under Section 372 read with Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Anjali Enterprises and Ranjeet Diwakar, challenging the judgment dated 05.07.2017 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby 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 if leave to appeal is not granted, then it would cause grave injustice to the applicant. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Boettcher India Pvt. Ltd. filed a complaint against accused M/s Anjali Enterprises through its proprietor and

Ranjeet Diwakar under Sections 138, 141 and 142 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Gurgaon, are as under:-

> *"Briefly stated the facts of the complaint are that the complainant is a Private Limited Company having its registered office at WZ-139B, Naraina Ringh Road, New Delhi and corporate office at Unit Nos.259 and 260, Tower-B, Spazedge, Sector-47, Sohna Road, Gurugram. They work closely with Boettcher's scientists to develop new rollers for their latest high-speed presses. Shri Himanshu S. Mohanty is the Chief Finance Officer/Authorized Representative of the complainant company and having authorized vide Board Resolution/Authority dated 05.09.2014 is competent to file, institute and prosecute the present complaint on behalf of the complainant company. That the accused no.2 acting on behalf of accused no.1 entered into an agreement dated 09.11.2010 as Marketing and Logistic Partner (distributorship) with the complainant wherein the accused agreed to a credit period of 45 days from the date of dispatch of the material by the complainant and if the payment is not made within the said credit period of 45 days, it was agreed that an interest @ 24% per annum shall be charged by the complainant on the due amount till payment. That since the very beginning itself the business conduct of the accused towards the complainant has not been fair and the accused have been very irregular and always in the habit of making delay in payment/withholding payment towards material supplied by the complainant to the accused. That an amount of Rs.59,00,000/- was due and outstanding from the accused to the complainant as per the books and accounts maintained by the complainant and at present, amount of Rs.38,84,786.83 is pending. That after much persuasion, the accused issued cheque bearing No.306004 dated 30.08.2014 for Rs.4,18,000/- and cheque*

> *bearing No.306003 dated 06.03.2014 of Rs.5,54,000/-. The complainant presented the said cheque for encashment but the same were returned back with the remarks "Insufficient Fund" vide memo dated 02.09.2014, 06.09.2014 and 10.09.2014. The complainant sent a legal notice dated 20.09.2014 to the accused but accused failed to make the payment. Hence, the present complaint."*

The complainant examined himself as CW-1 and tendered documents; copy of board resolution/authority letter Ex.CW1/1, original cheques Ex.CW1/2 and Ex.CW1/3, return memos Ex.CW1/4 and Ex.CW1/5, legal notice Ex.CW1/6, postal receipt Ex.CW1/7 and Ex.CW1/8, courier receipt Ex.CW1/9 and Ex.CW1/10, proofs of delivery of speed post Ex.CW1/11 and Ex.CW1/12 and that of courier Ex.CW1/13 and Ex.CW1/15.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. He denied all the incriminating evidence against him. In defence, accused examine DW-1 Kaushak Singh, Accountant of Aar Vee Pvt. Ltd. and DW-2 Sandeep Saini.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 05.07.2017.

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

Lower Court record was also requisitioned.

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

The perusal of the record further shows that in the complaint, no particulars have been mentioned. There are no particulars as how much and when the articles were sent. It is stated that at the time of filing the complaint an amount of ₹38,84,786.83 was pending and after much persuasion, the accused issued cheque bearing No.306004 dated 30.08.2014 for ₹4,18,000/- and cheque bearing No.306003 dated 06.03.2014 of ₹5,54,000/-. The cheques when presented for encashment, were returned back with the remarks 'Insufficient Funds' and legal notice dated 20.09.2014 was sent to the accused. In the present case, the defence of the accused is that after the issuance of the cheques in question, he made payment of ₹3,18,000/- to the complainant on 09.09.2014 and also paid ₹1 lakh by way of adjustment of Aar Vee Printers Pvt. Ltd. At the time of arguments, learned counsel for the applicant admitted receipt of above-said amounts after the issuance of the cheques. One of the cheque is of ₹4,18,000/- and after the dishonouring of the cheque, amount of ₹4,18,000/- has been paid to the complainant by the accused but neither in the complaint nor in the legal notice, there is mention regarding receiving of this amount. The defence of the accused before the trial Court is that this amount has been paid regarding the cheque of ₹4,18,000/- but in the legal notice dated 20.09.2014, both the amounts have been demanded from the accused, which means that complainant has asked more than due amount. There is nothing in the complaint that payment made by the accused of ₹4,18,000/- has been adjusted in the amount which is already due towards the complainant. When it is not the case of the complainant in the complaint that amount paid by the accused after the issuance of the cheque has been adjusted in the earlier amount, then the complainant cannot improve his version and cannot make a new case.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 05.07.2017 passed by learned JMIC, Gurgaon, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

**January 14, 2019** **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**