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**IN THE HIGH COURT OF DELHI**

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**Cont. Cas (C) No.567/2007**

Vikas Vij & Ors. ....Petitioners  
through: Mr. S.S.Gandhi, Sr. Advocate with  
Mr. Abhinit Das and Mr. Piyush Singh, Advocates

VERSUS

Rajiv Marwah & Ors ..... Respondents  
through: Mrs. Avnish Ahlawat, Advocate for R-1.  
Ms. Renuka Arora, Advocate for R-2, 3 and 4

DATE OF DECISION:  
27.03.2008

**CORAM:**

**Hon'ble Mr.Justice Pradeep Nandrajog**

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

: **PRADEEP NANDRAJOG, J.**

1. In January 2005 the respondent no.1 entrusted 4 diamonds for sale to the petitioners. Petitioners failed to make payment for the diamonds and even failed to return the same.

2. On 17.5.2005 a memorandum of understanding was entered into between petitioner No.1 and respondent No.1 under which petitioner No.1 agreed to pay, as price of the diamonds, Rs.34,70,000/- to the respondent No.1.

3. Pursuant to the aforementioned memorandum the

petitioners issued two cheques, dated 5.8.2005 and 5.2.2006 in sum of Rs.1,70,000/- and Rs.5,50,000/- respectively to respondent No.1 which were dishonoured when presented for encashment.

4. On 23.3.2006 respondent No.1 filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act against the petitioner No.1.

5. On the basis of the complaint made by the respondent No.1 to the police, on 12.9.2006, a FIR bearing No.377/2006 under Sections 420/406/120B/34 IPC was registered against the petitioners.

6. Thereafter respondent No.1 filed a summary suit under Order 37 CPC against the petitioners alleging dishonour of the aforementioned two cheques. Vide order dated 19.9.2006 leave to defend was granted to the petitioners subject to their depositing a sum of Rs.5,50,000/- in the court.

7. On 25.9.2006 application filed by petitioners 2 to 4 seeking anticipatory bail in the FIR No.377/2006 was rejected.

8. On 29.9.2006 application filed by petitioner No.1 seeking anticipatory bail in FIR No.377/2006 was also rejected.

9. Thereafter petitioners moved this court seeking anticipatory bail.

10. On 3.10.2006 this court granted interim protection to

the petitioners 2 to 4 by prohibiting their arrest.

11. Vide order dated 10.10.2006 this court granted anticipatory bail to the petitioners subject to their making payment of Rs.12.7 lacs to the respondent No.1 within a week and furnishing a bank guarantee in sum of Rs.22 lacs. Respondent No.1 also undertook to withdraw the summary suit filed by him under Order 37 CPC as also the complaint under Section 138 of the Negotiable Instruments Act.

12. On 20.10.2006 cheque dated 17.10.2006 in sum of Rs.5,50,000/- issued by petitioner No.1 pursuant to the order dated 19.9.2006 passed in proceedings under Order 37 CPC was handed over to respondent No.1.

13. On 21.11.2006 aforementioned cheque when presented for encashment was dishonoured.

14. On 20.12.2006, in their application seeking anticipatory bail, petitioners again gave an undertaking in this court that they shall comply with the order dated 10.10.2006 by 15.1.2007. This court directed that the anticipatory bail granted to the petitioners shall stand cancelled if the undertaking is not complied with.

15. On 11.1.2007 application filed by the petitioners seeking modification of the order dated 20.12.2006 was dismissed by this court.

16. On 15.1.2007 anticipatory bail granted to the petitioners automatically got cancelled due to the breach of the undertaking.

17. On 17.1.2007 non-bailable warrants were issued against the petitioners.

18. Thereafter proceedings under Sections 82 and 83 of the Code of Criminal Procedure 1973 were initiated against the petitioners.

19. On 16.3.2007 petitioner No.4 was arrested and remanded to judicial custody till 19.3.2007.

20. On 19.3.2007 petitioners No.1 to 3 surrendered before the court of learned Metropolitan Magistrate. Bail applications moved by all the petitioners were dismissed. Petitioners were remanded to judicial custody till 21.3.2007.

21. On 21.3.2007 a compromise deed was executed between respondent No.1 and petitioners No.1 and 2. Under the compromise deed the petitioners were to pay Rs.36,00,000/- to respondent No.1 on or before 20.6.2007. As a security, petitioners handed over physical possession of property bearing No.20/2799, Beadon Pura, Karol Bagh, New Delhi as also title deeds of the said property to respondent No.1. One of the term of the compromise was that if the petitioners failed to make required payment on or before 20.6.2007, respondent No.1 shall

be entitled to sell the aforesaid property and appropriate the amount recovered as sale proceeds.

22. Noting the compromise entered into between the parties, vide order dated 23.3.2007, the learned Metropolitan Magistrate granted interim bail to the petitioners.

23. Afore-noted facts are admitted facts. From here on starts the respective version of the parties.

24. While respondent no.1 alleges that on 17.6.2007 he met petitioner No.1 who expressed his inability to honour the compromise dated 21.3.2007 and directed him to sell the property to one Mr. Bhawani Shankar. That pursuant to the direction of petitioner No.1, Bhawani Shankar paid a sum of Rs.2,51,000/- as earnest money to respondent No.1. Thus, respondent No.1 asserts a right to sell the property No.20/2799, Beadon Pura Karol Bagh, New Delhi.

25. Per contra, petitioners deny that petitioner no.1 met the respondent no.1 on 17.06.2007 and directed him to sell the property. In fact, it is pleaded that petitioners made every endeavor to honour the compromise dated 21.03.2007 but instead of accepting payment in sum of Rs.36,00,000/- from the petitioners, respondent No.1 chose to flout the compromise dated 21.03.2007 by accepting the earnest money from Mr. Bhawani Shanker. Case of the petitioners is that under the compromise

dated 21.3.2007 they could pay Rs.36,00,000/- on or before 20.6.2007 and redeem the property.

26. Petitioners contend that their intention of honouring the compromise dated 21.03.2007 is evident from the fact that on 22.6.2007 they filed an application before the learned Metropolitan Magistrate praying that respondent No.1 be directed to accept the payment of Rs.36,00,000/- and return the title deed and keys of the property. That on subsequent dates i.e. 29.06.07, 03.07.07, 18.07.07 and 20.08.07 respondent no.1 refused to accept the payment of Rs.36,00,000/- from the petitioners.

27. On the other hand, respondent no.1 contends that the fact that petitioners had at no point of time any intention to honour the compromise dated 21.03.2007 is evident from the order dated 1.10.2007 wherein after noting that the parties have not compromised the matter the learned Metropolitan Magistrate had cancelled the interim bail granted to the petitioners and had remanded them to judicial custody for a period of 15 days.

28. Respondent no.1 further contended that immediately thereafter the petitioners filed the present contempt petition. That vide order dated 3.10.2007 this court directed the petitioners to deposit a sum of Rs.36,00,000/- with this court. Noting the order dated 3.10.2007 of this court vide order dated

5.10.2007 learned Metropolitan Magistrate granted interim bail to the petitioners. That it is crystal clear that the petitioners have filed the present contempt petition with a view to avoid the consequences of the order dated 1.10.2007 passed by the learned Metropolitan Magistrate.

29. To put it pithily, petitioners alleged contempt by respondent No.1 in disobeying the compromise effected in Court proceedings.

30. At the outset I note that respondents No.2 to 4 are police officers and I see no reason why they have been impleaded as contemnors 2 to 4. Indeed, said police officers were not party to any settlement and they being in contempt does not arise.

31. It is settled law that contempt proceedings cannot be resorted to as a weapon of offence and a contempt is a matter between the Court and the contemnor.

32. Thus, bona fides of the relator/petitioner assumes significance.

33. It is trite that unless a compromise results in an undertaking to the Court and is accepted by the Court breach thereof would not be actionable under contempt jurisdiction for the reason a compromise inter se the parties, if breached, gives rise to a cause of action to enforce the compromise by way of a

civil proceedings.

34. In the instant case the conduct of the petitioners has been blameworthy for the reason the petitioners were always in default at virtually at every stage of the various compromises or conditional orders granted in their favour. Relatable to the compromise effected on 21.3.2007, as is evident from the respective pleadings of the parties a serious question of disputed fact requiring evidence to be led has to be adjudicated before the guilty party can be held accountable.

35. The past conduct of the petitioners taints whatever they say. Evidence would have to be recorded whether respondent No.1 obtained the go ahead of petitioner No.1 to enter into an agreement to sell with Bhawani Shankar.

36. In my opinion the dispute as projected cannot be resolved in contempt jurisdiction as the same requires a substantive adjudication at a regular trial.

37. The notice of contempt is accordingly discharged.

38. The contempt petition is dismissed.

39. No costs.

March 27, 2008  
MM

PRADEEP NANDRAJOG  
JUDGE