

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. REV. P. No. 195/2008**

Date of Decision : 02.9.2009

SUNIL GUPTA

.....Petitioner

Through: Mr.R.P.Luthra, Adv.

Versus

KAMAL KANT

..... Respondent

Through: Mr. Pawan Bahl, APP for
the State.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. This is a revision petition filed by the petitioner against the order dated 06.2.2008 passed by learned Additional Sessions Judge, Karkardooma Court, Delhi by virtue of which two criminal appeals bearing Nos. 29/2006 and 30/2006 titled as **Kamal Kant Vs. Sunil Gupta** were treated as disposed of in terms of settlement arrived at between the parties although the learned MM had sentenced the respondent to simple imprisonment of two years and a fine of Rs.5,000/-.
2. Briefly stated the facts leading to the filing of the present revision petition are that the present petitioner filed two complaints cases u/s 138 of the Negotiable instruments

Act, 1881 on account of dishonour of cheques. It has been stated by the learned counsel for the petitioner that in one case, the cheque amount was Rs.1,40,000/- and in the other case, the cheque amount was Rs.1,20,000/-. The respondent after having been found guilty of the offence in both the cases was sentenced to SI of two years and a fine of Rs.5,000/- and in default of payment of the said fine, further SI of 30 days.

3. The complainant namely the petitioner herein was also granted the benefit of compensation to the extent of Rs.2,60,000/-. This order of sentence was passed on 26.9.2006.
4. The order of sentence passed by the learned MM does not prima facie seem to be proper on account of the fact that there should have been independent sentences in both the cases rather than clubbing of sentences and imposing only to one punishment.
5. Be that as it may, the respondent/accused Kamal Kant filed two separate appeals titled as **Kamal Kant Vs. Sunil Gupta** bearing Nos.29/2006 and 30/2006. During the pendency of these appeals, the present petitioner and respondent/accused who was the appellant before the Court of Sessions are purported to have entered into a settlement on 18.10.2007 at the Mediation Centre. The terms and conditions of the settlement were given as under:-

- “ (1) It is agreed between the parties that a sum of Rs.2,50,000/- (Rs. Two lakhs and fifty thousand) shall be payable by the appellant to the respondent as full and final settlement in respect of the two appeals, mentioned above.
- (2) It is agreed between the parties that according to the above said settled amount, a sum of Rs.50,000/- (Rs. Fifty thousand) shall be paid by the appellant to the respondent Sunil Gupta in cash on 20.11.07 before the court of Sh.Mahavir Singhal, Ld. ASJ, KKD, Delhi.
- (3) It is further agreed between the parties that the appellant shall hand over seven P.D.Cs as security to the respondent No.1 with the date of after every two months, out of which six cheques would be of Rs.30,000/- each and last cheque of Rs.20,000/-.
- (4) It is also agreed between the parties that the appellant shall pay six installment of Rs.30,000/- each on every second month between 15th to 20th to the counsel of respondent No.2 namely Sh. K.K. Gambhir Adv in chamber No.D.-204, KKD Courts, Delhi, in the presence of respondent Sunil Gupta and the Ld. Counsel there and then shall return the P.D.C of that installment to the appellant.
- (5) It is further agreed between the parties that in case of any default in making the payment, as above, the respondent shall be entitled to get the remaining cheques encashed and would also be entitled to initiate legal action, civil as well as criminal against the appellant, as per law.
- (6) The same shall be voluntarily and freely accepted by the appellant and respondent No.1.
- (7) Both the parties have undertaken to remain bound by the terms and conditions of the settlement.”

6. In terms of the settlement, the parties were directed to appear before the learned Sessions Judge on 20.11.2007 to enable the appellant/respondent Kamal Kant to make initial payment of Rs.50,000/- and also hand over the

remaining six cheques of Rs.30,000/- & the last cheque of Rs.20,000/- in the form of post dated cheques.

7. The respondent/accused did not appear before the learned ASJ on 20.11.2007 and on 06.2.2008 and the learned Sessions Judge had taken note of the fact that the parties have arrived at a settlement before the Mediation Centre on 18.10.2007 and treated the appeals to have been disposed of in terms of the said settlement.
8. The present petitioner feeling aggrieved on account of the disposal of the appeals on the basis of the said settlement filed the present petition.
9. It has been urged by the ld. counsel for the petitioner that the respondent /accused has committed fraud inasmuch as there was a settlement according to which the respondent/appellant was specifically required to appear before Sh.Mahavir Singhal, learned ASJ, Karkardooma Courts, Delhi on 20.11.2007 so as to enable him to make a payment of Rs.50,000/-. Neither he appeared nor the initial payment of Rs.50,000/- was received by the petitioner. This fact could not be brought to the notice of the learned ASJ as no one was present before him on 06.2.2008. It has been contended by the learned counsel for the petitioner that after passing of the order on 06.2.2008, he did file an application bringing this fact to the notice of the learned ASJ. It is urged that since the terms and conditions of the settlement have not been

adhered to and the learned ASJ, if not on 06.2.2008 but at least on filing of the application, ought to have considered the appeal on merits rather than having treated them as disposed of in terms of the settlement.

10. The respondent/appellant has been served but he did not appear. I have gone through the records.
11. No doubt, the respondent ought to have been heard but since he has chosen to remain absent despite having been served, the Court is not obliged to adjourn the matter for him.
12. A perusal of the terms and conditions of the settlement clearly reflects that the respondent was required to make an initial payment of Rs.50,000/- on 20.11.2007 before the learned Sessions Judge and thereafter also hand over the post dated cheques as stipulated in the said settlement. Since he has not complied with the terms and conditions of the said settlement, the learned Sessions Judge ought not to have disposed of the appeal by passing the impugned order of 06.2.2008 and treated the appeals to have been settled in terms of the compromise.
13. By permitting the said order to stand it will not only make the mockery of processes of law inasmuch the respondent /appellant who has already been convicted yet he is roaming freely without either suffering imprisonment or even without making payment of a single penny to the petitioner. The petitioner cannot be directed to seek

execution of the compromise. It is not a civil case. The respondent has been guilty of fraud and abuse of the processes of law and therefore the law must be brought to its logical conclusion.

14. As a matter of fact if the order dated 06.2.2008 is not set aside, it will be only putting the seal of legality on an illegal & improper order because if the respondent did not appear before the learned ASJ in terms of compromise & pay initial amount, the appeal ought to have been decided on merits.
15. I, therefore, set aside the order dated 06.2.2008 and remand the matter back to the learned ASJ. The learned ASJ is directed to decide the appeal in accordance with law. The petitioner is directed to appear before the learned Sessions Judge on 16.9.2009 at 2.00 p.m.
16. With these directions, the present petition is allowed.

V.K. SHALI, J.

SEPTEMBER 02, 2009
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