

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

Date of Reserve: October 04, 2010

Date of Order: 8th October, 2010

+ Crl.M.C.No. 1217/2009

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08.10.2010

**M/s Hitek Industries Industries (Bihar) Ltd.
& Ors.**

... Petitioners

Through: Mr. B.B.Upadhyay, Sr. Advocate with
Mr. Pavan Kumar, Advocate

Versus

The State of Delhi & Anr.

... Respondents

Through: Mr. S.P.Kalra, Sr. Advocate with
Mr. Rajeev Kapoor, Advocate for R-2

JUSTICE SHIV NARAYAN DHINGRA

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| 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. |

JUDGMENT

This present petition has been filed by the petitioners with a prayer for quashing the criminal complaint No. 798/1996 pending in the Court of ACMM under Section 138 of Negotiable Instruments Act on the ground that petitioners had entered into a compromise with the respondent and the learned trial Court had taken cognizance of the offence in disregard to the compromise. It is stated that breach of compromise agreement between the parties was a civil liability and the Court of MM could not have issued summons under Section 138 and ask the petitioners to face trial.

2. Brief facts relevant for deciding this petition are that the respondent no.2 had obtained an arbitration award which culminated into a decree against the petitioner for the due amount which the respondent had to recover from the

petitioner. After suffering this decree, the petitioner in order to settle disputes with the respondent entered into a compromise agreement with the respondent on 22nd January, 2008 and under this compromise agreement the petitioner was to pay Rs.1.4 crore in total settlement of the respondent's claim in a phased manner. It was also agreed that in case the petitioner adhered to the compromise agreement and passed the amount as stated in the agreement, the case pending before MM shall also stand compromised. The parties were to jointly request to the Court of MM for adjournment of the legal proceedings till the fulfillment of terms of compromise agreement. Clause 'c' of the agreement reads as under:

"c) it is clearly agreed and understood that consecutive dishonour of any two of these cheques for any reason whatsoever; or dishonour of any four (4) cheques in all; out of the total of one Demand Draft and balance 10 post dated cheques given by the second party; shall amount to default and breach of the contract and the Decree Holder in that situation shall be entitled to recover and realize the total decretal amount awarded to the Decree Holder less amount already paid in terms of the present agreement, if any, and the Judgment Debtors shall not raise any objection to the execution of the decree and prosecution of other proceedings, both civil as well as criminal, pending before the respective Courts. The FIRST PARTY (Decree Holder) shall be well within its rights to prosecute the proceedings for recovery besides the cases, which are agreed to be deferred under this agreement."

3. It is petitioner's own case that this compromise deed was not adhered to by the petitioner and the payment of Rs.1.4 crore which was to be completed by 21st July, 2010 was not made and the cheques issued by the petitioner in terms of compromise also got dishonoured.

4. When the petitioner filed this petition for quashing of complaint pending before MM in respect of a cheque of Rs.25 lac petitioner offered to deposit Rs.25 lac in the Court and this amount was deposited. The petitioner

counsel contended that in view of judgment in Damodar S. Prabhu v. Syed Babalal H. AIR 2010 SC 1907, the complaint against the petitioner under Section 138 of NI Act should be quashed and the depositing of amount by the petitioner in the Court should be considered as sufficient compliance of the judgment. The petitioner during arguments offered to pay 15% of the cheque amount as cost to be deposited with Legal Aid. It is submitted that in view of this offer of the petitioner the petition should be allowed and complaint under Section 138 NIC Act should be quashed.

5. The sum and substance of argument of the petitioner's counsel is that even if respondent does not agree to the compromise, in view of the judgment in Damodar S. Prabhu case (supra), the Court has to force compromise on the respondent and on deposit of the cheque amount plus cost as stated above, the Court should quash the criminal complaint. I consider that this is not the spirit of the judgment of the Supreme Court. The word 'compromise' itself signifies an agreement between the two parties to compound the offence. If the parties do not agree to compound the offence, the Court has to proceed with the complaint. It is different thing that the Court on considering the offer of payment of cheque amount plus cost may not award a punishment of imprisonment and may only award penalty plus compensation. But the Court cannot force the respondent to enter into a compromise on deposit of cheque amount or the penalty amount by the accused. The Court can only advise/ask the respondent/complainant to consider the offer of compromise. In the present case, the respondent has refused to compromise in view of the past conduct of the petitioner. The petitioner was to pay huge amount to the respondent (as per respondent around Rs.3 crore) in terms of award and decree of the Court the respondent agreed to settle the dispute for a sum of Rs.1.4 crore only that also to

be paid in phased manner, but the petitioner still did not adhere to this compromise and the cheques issued by the petitioner got dishonoured. It only seems that the petitioner wanted to gain time. This compromise was entered into January, 2008 - around 03 years have passed since compromise agreement was entered into. While total payment should have already been paid, the only amount received by the respondent is around Rs.50 lac against the compromised amount. A person has a right over his property and money. If he is deprived of that right by skillful manipulation of judicial proceedings or craft of buying time from the Courts, the complainant or the aggrieved person cannot be deprived of the benefits which he would have gained from timely payment of the money by investing the money in appropriate manner.

6. I consider that the petition filed by the petitioner for quashing of complaint because the petitioner deposited Rs.25 lac in the Court cannot be allowed. I also consider that the amount of Rs.25 lac deposited by the petitioner in the name of Registrar General should be paid to the respondent no. 2 towards the part payment of its dues in terms of the agreement relied upon by the petitioner himself i.e. agreement dated 22nd January, 2008. The criminal complaint cannot be quashed as the petitioner failed to abide by the agreement. The petition is dismissed.

The Registry is directed to release the amount of Rs.25 lac, kept in the FD plus interest accrued on it, in favour of respondent no.2.

October 08, 2010
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SHIV NARAYAN DHINGRA, J.