

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 322/2009 and CRL.M.A. 6028/2009 (stay)**

Decided on 06.12.2010

IN THE MATTER OF :

VIJAY GUPTA

..... Petitioner

Through : Mr. Manoj Taneja, Adv. with
petitioner in person.

versus

STATE & ANR.

..... Respondents

Through : Mr. M.N. Dudeja, APP for State.
Mr. Ajay Jain, Adv. for R-2 with R-2 in person.

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* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may 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 |

HIMA KOHLI, J. (Oral)

1. The present revision petition has been filed by petitioner praying *inter alia* for setting aside the orders dated 30.3.2009 and 18.4.2009 passed by the learned Metropolitan Magistrate and for dismissing Complaint Case No.2775/1 pending before Mr. Manoj Kumar, SCJ, Patiala House Courts. Vide order dated 8.11.2010, parties were directed to be present in Court today. Both the parties are present in Court.

2. On the last date of hearing, it was recorded that the dispute in the present case pertains to a cheque of ₹1.00 lac which the respondent

No.2/complainant had alleged, was issued by petitioner/accused towards interest on an amount of ₹40.00 lacs, which he had received from the complainant, pursuant to an Agreement to Sell dated 21.1.2004.

3. On a pointed query posed to the counsel for respondent No.2/complainant as to whether the MOU dated 26.6.2004, copy of which is filed by the petitioner, was signed by respondent No.2/complainant, the reply is in the positive. It is also conceded that by virtue of the aforesaid MOU, it was agreed between the parties that respondent No.2/complainant had received a sum of ₹31.00 lacs, apart from the sum of ₹9.00 lacs received earlier, and nothing further would be due or payable by the petitioner to respondent No.2/complainant. In fact, the MOU recorded as below :

“That this is in full and final settlement and none of the parties shall have any other claim of any nature whatsoever against the other party.

That the complaints, actions, suit proceedings, if any, initiated by any party against the other party shall stand hereby withdrawn.”

4. It is submitted by the counsel for the petitioner that despite arriving at a mutual settlement as recorded in the aforesaid MOU, respondent No.2/complainant sought to encash the cheque of ₹1.00 lac dated 30.7.2004, which should not have been presented to the bank, in the light of the aforesaid MOU. He submits that after the aforesaid cheque was returned by the bankers of the petitioner to him with the remarks, “stop payment”, respondent No.2/complainant filed a mis-conceived complaint petition under Section 138 of the Negotiable Instruments Act, 1881 (in short ‘**the Act**’) only to pressurize the petitioner. It is pointed out that in the complaint petition, respondent No.2/complainant has intentionally made no

mention of the MOU dated 26.6.2004. Further, respondent No.2/complainant deliberately failed to place on record, the reply sent by petitioner to the legal notice dated 9.9.2004, which mentioned the terms and conditions of the MOU dated 26.6.2004 and the fact that after receiving the Pay Order of ₹31.00 lacs, nothing further remained due or payable by the petitioner to respondent No.2/complainant. It is therefore urged that there was no question of payment of interest of ₹1.00 lac, as claimed by respondent No.2/complainant and the complaint filed by him is liable to be quashed.

5. Failure on the part of respondent No.2 to reveal the factum of the MOU dated 26.06.2004 and the reply of the petitioner to the legal notice issued to him appears to be deliberate and an attempt on the part of respondent No.2/complainant to abuse the process of the court by filing a complaint under Section 138 the Act. The plea of respondent No.2/complainant, who is present in Court, that the cheque of ₹1.00 lac was towards interest on ₹40 lacs, is not tenable in the light of the specific understanding reached between the parties in the MOU that the amount of ₹40.00 lacs paid to respondent No.2/complainant would be in full and final settlement and neither party would be left with any claim against the other.

6. At this stage, respondent No.2/complainant tenders an unqualified apology and states that he has no objection to the quashing of the complaint filed by him before the learned Metropolitan Magistrate under Section 138 of the Act and all proceedings arising therefrom.

7. In view of the aforesaid unqualified apology tendered by respondent No.2/complainant, this Court refrains from initiating any

contempt proceedings against respondent No.2/complainant. The present revision petition is allowed and the **Complaint Case No.2775/1** entitled Rajesh Kumar Aggarwal vs. Vijay Gupta pending before Mr. Manoj Kumar, SCJ, Patiala House, under Section 138 of the Act is quashed along with the proceedings arising therefrom.

8. Considering the conduct of the respondent No.2/complainant, which has been highlighted above and in the light of the fact that his filing of the complaint has led to a wastage of court's time, he is directed to deposit costs of ₹10,000/- with the Delhi High Court Legal Services Committee, within a period of one week, while filing proof of deposit on the record within one week thereafter.

9. The petition is disposed of, along with the pending application.

10. Registry is directed to forward a copy of this order to the trial court for perusal. In the event of failure on the part of the respondent No.2 to deposit the costs and file proof of deposit within the stipulated time, the matter be placed before the Court.

DECEMBER 06, 2010
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(HIMA KOHLI)
JUDGE