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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1603/2012 & CRL.M.A. 5601/2012

KONEGA INTERNATIONAL PVT LTD Petitioner
Through Mr. S.K. Gupta, Advocate

versus

SHYAM GOYAL Respondent
Through Mr. Ashish Kumar, Advocate for
respondent.
Respondent in person.

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Date of Decision: 16th August, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

1. Present petition has been filed under Section 482 Cr. P.C. for quashing of complaint being CC No. 2299/10/06 (old CC No. 1370/1/06) pending before Mr. Sanjay Jindal, JSCC/ASCJ (NW), Rohini, Delhi on the ground that the respondent-complainant having received the settled amount under the Memorandum of Understanding (for short 'MOU') executed between the parties is now dishonestly

refusing to withdraw his complaint.

2. The relevant facts of the present case are that respondent-complainant had filed the present complaint under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 on the ground that the petitioner's cheque bearing No. 334362 dated 15th July, 2005 for ₹ 5,00,000/- drawn upon Oriental Bank of Commerce in favour of M/s. Bhoruka Enterprises, a proprietorship firm of respondent-complainant, had been dishonoured.

3. On 1st October, 2011, an MOU was executed between the petitioner and respondent-complainant by virtue of which all the disputes between the parties were resolved. The relevant portion of the aforesaid MOU is reproduced hereinbelow:-

“5) M/s Bhoruka Enterprises has filed a complaint in the court of CHIEF METROPOLITAN MAGISTRATE DELHI, Case No. CC/1370/1/06 U/s 138 NI Act, against M/s Konega International Private Limited & Mr. Mahesh Goenka, Chairman. The said case is pending as on date.

<i>Cheque no.</i>	<i>Date</i>	<i>Amount</i>
<u>334362</u>	<u>15.07.2005</u>	<u>5,00,000/-</u>

6) The above named parties have settled the dispute out of Court.

7) In view of the settlement M/s. Koenga International Pvt. Ltd., M/s Garden View Impex Pvt. Ltd., M/s Mewar Exim Pvt. Ltd., M/s Goenka Apparel Pvt. Ltd. and Mr. Mahesh Goenka have agreed to pay a sum of Rs.18,00,000/- (Rupees Eighteen Lacs Only) as full & final settlement amount payable to M/s. Bhoruka Enterprises, who have agreed to accept the said sum of money as & by way of full and final settlement of their dues.”

(emphasis supplied)

4. On 5th November, 2011 the settled amount was duly received by the respondent-complainant and a money receipt was executed by the respondent-complainant in this regard. The said money receipt is reproduced hereinbelow :-

“MONEY RECEIPT

5.

We hereby confirm that, we have received Rs.18,00,000/- (Rupees Eighteen Lacs only) through Demand Draft No.547368 dated 31.10.2011 of Indusland Bank, from Mr.Mahesh Goenka through his representative Sh. Avdesh Upadhyay, as per Memorandum of Understanding in the court of the concerned court of Metropolitan Magistrate on 05.11.2011.

For Bhoruka Enterprises

Seal/Sd.

Prop.

(Mr. Syam Goyal)”

(emphasis supplied)

6. In fact, the respondent-complainant wrote a letter dated 5th November, 2011 to the petitioner which clearly stated that respondent-complainant would withdraw all six complaint cases filed by him including the present complaint. The aforesaid letter is reproduced hereinbelow:-

“Date : 5/11/2011

To,

- 1) Konega International Pvt. Ltd.*
- 2) Goenka Apparel Pvt. Ltd.*
- 3) Garden View Impex Pvt. Ltd.*
- 4) Shri Mahesh Goenka*
Mumbai

Refer our Memorandum of Understanding regarding our full & final settlement.

We confirm that we have settled the total outstanding as per our Memorandum of Understanding. We also confirm that we have received the amount of Rs.18,00,000/- (Rupees Eighteen Lacs Only) through Demand Draft No.547368 dated 31.10.2011 of Indusind Bank Ltd., payable at New Delhi as per MOU and we received DD on 05-11-2011.

We further confirm that after the receipt of above payment of Rs.18,00,000/-, outstanding of M/s. Konega Internatinal Pvt. Ltd., M/s. Goenka Apparel Pvt. Ltd., M/s Garden View Impex Pvt. Ltd. & Shri Mahesh Goenka is settled as per our MOU.

Also, we confirm that after we will take necessary steps for withdraw all the complaint/cases filed as follows as per our MOU:-

<u>Name of Court</u>	<u>Case No.</u>
1)DELHI HINDUSTANI MERCANTILE ASSOCIATION (REGD)	156/08-09
2)DELHI HINDUSTANI MERCANTILE ASSOCIATION (REGD)	157/08-09
3)DELHI HINDUSTANI MERCANTILE ASSOCIATION (REGD)	022/08-09
4)CHIEF METROPOLITAN MAGISTRATE DELHI	CC/1340/1/06
5)CHIEF METROPOLITAN MAGISTRATE DELHI	CC/1361/1/06
6)CHIEF METROPOLITAN MAGISTRATE DELHI	CC/1370/1/06

We also confirm, that we received Demand Draft of Rs.18,00,000/- and we handover the receipt of DD to your representative Mr. Avesh Upadhaya. As per MOU we have filed an application for withdraw above mentioned six cases on involved companies in these cases.

*Thanking you
FOR BHORUKA ENTERPRISES
Seal/Sd.
PROPRIETOR”*

(emphasis supplied)

7. In pursuance to the aforesaid MOU dated 1st October, 2011, the respondent-complainant even filed an application for withdrawal of the present complaint before the trial court. The relevant portion of the said application is reproduced hereinbelow:-

“2. That during the pendency of the present case the complainant and the accused has compromised the matter as per Memorandum of Understanding, copy of which is enclosed herewith for the kind perusal of the Hon’ble Court.

3. The Complainant submits that as per the abovesaid Memorandum of Understanding he wants to withdraw the present complaint case.

PRAYER:

It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to allow the complainant to withdraw the present complaint case as per the Memorandum of Understanding attached with this application.

Any other order(s) which this Hon’ble Court deems fit and proper may also be passed in favour of the complainant in the interest of justice.”

(emphasis supplied)

8. However, the aforesaid application for withdrawal of complaint was subsequently withdrawn by the respondent-complainant on the ground that the MOU executed between the parties had not been complied with by the petitioner. The order dated 29th February, 2012 passed by the trial court dismissing the respondent-complainant’s application is reproduced hereinbelow:-

29.02.2012

*Present : Counsel for complainant Sh. Shyam Goel
and Sh. Rajesh Vashisht, Advocates.
Accused is absent.
Sh. SK Gupta, Adv., counsel for accused.*

The counsel for the accused has filed Vakalatnama along with one application seeking exemption of the accused from personal appearance.

It is pointed out that one application filed by the complainant for withdrawal of the present complaint is pending. The application is dated 05.11.2011. It is submitted by the counsel for the complainant that the said application was filed on the basis of MoU executed between the parties but since appropriate compliance has not been made on behalf of the accused, the said MoU was cancelled and the complainant does not want to pursue his application for withdrawal of the present complaint.

Heard.

In view of the request made on behalf of the complainant, the application seeking withdrawal of the complaint is dismissed as withdrawn.

As far as the application filed on behalf of the accused for exemption from personal appearance is concerned, it reveals from the record that NBW was earlier issued against the accused which has not yet been executed. In view of the things happening between the parties as reflected from the documents available on record, the application for exemption of the accused from personal appearance is allowed for today only and the NBW against the accused is kept in abeyance till next

date of hearing. The accused is directed to appear positively on the next date of hearing.

Put up for appearance of the accused and further proceedings on 24.03.2012.”

(emphasis supplied)

9. Mr. S.K. Gupta, learned counsel for the petitioner submits that as the disputes pertaining to the aforesaid complaint had been resolved by way of MOU dated 1st October, 2011 and as money had been paid under the said MOU, respondent-complainant was obliged in law to withdraw his complaint and/or if respondent-complainant was not agreeable to do so then this Court should quash the aforesaid criminal complaint.

10. On the other hand, Mr. Ashish Kumar, learned counsel for the respondent-complainant stated that after execution of MOU dated 1st October, 2011, another MOU dated 4th November, 2011 was executed between the parties and as the same was not implemented by the petitioner, the respondent-complainant was left with no other option but to take back his withdrawal application. Though a copy of the subsequent MOU dated 4th November, 2011 has not been annexed with the reply-affidavit, learned counsel for the respondent-

complainant has today in Court handed over a copy of the same, which is taken on record.

11. A perusal of the copy of the alleged subsequent MOU dated 4th November, 2011 clearly shows that same has not been signed by the petitioner. When this fact was brought to the notice of learned counsel for the respondent-complainant, he referred to e-mails exchanged between the parties on 3rd November, 2011.

12. Having heard the parties at length this Court is of the view that the respondent-complainant's conduct is neither fair nor just. It is pertinent to mention that the money receipt and the respondent-complainant's own letter dated 05th November, 2011 do not mention either breach of MOU dated 01st October, 2011 or execution of any subsequent MOU dated 04th November, 2011. Clearly both the defences set out by the respondent-complainant are an afterthought.

13. On a perusal of the papers, this Court is of the opinion that the cheque for which present complaint had been filed was settled between the parties by way of MOU dated 1st October, 2011 and same was also implemented inasmuch as the petitioner not only paid the settled amount to the respondent-complainant, but the said payment

was also accepted by the respondent-complainant without demur.

14. It is pertinent to mention that the subsequent MOU is not signed by the petitioner. A perusal of the e-mail dated 3rd November, 2011 exchanged between the parties shows that it does not refer to MOU dated 1st October, 2011. In fact, this Court is of the view that the e-mails pertain to an independent property transaction between the parties. If the respondent-complainant is of the view that the subsequent MOU has not been implemented or e-mails dated 3rd November, 2011 disclose another binding agreement, then the remedy available to the respondent-complainant lies in filing a separate civil suit but the respondent-complainant can in no circumstances be permitted to resile from the MOU dated 1st October, 2011 by virtue of which respondent-complainant had unequivocally undertaken to withdraw his complaint.

15. In fact, the Supreme Court in ***Ruchi Agarwal Vs. Amit Kumar Agrawal & Ors., (2005) 3 SCC 299*** has held as under:-

“8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did

not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Cr.P.C. proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

9. *In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.Cr.No.224/2003 registered in Police Station, Bilaspur, (Distt.Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.*

16. This Court in ***Kirti Jain @ Shalu Jain & Anr. Vs. Sh. J.P.***

Jain, (2007) 1 JCC 53 has held as under:-

“12. From the date when the settlement took place between the parties till the divorce between the petitioner No. 1 and Pankaj Jain, there is a period of 9 to 10 months when various steps in furtherance thereof were being taken. The respondent played active role. He did not make his intentions clear that in so far as offending portion in the complaint filed by the petitioner No. 1 is concerned, he would be reserving his rights and would be taking action. He kept quiet during all this period. After the terms of settlement were given effect to resulting in decree of divorce dissolving the marriage between the petitioner No. 1 and Pankaj Jain, withdrawal of complaint by the petitioner No. 1 & withdrawal of suit by Pankaj Jain, the respondent shot the salvo in the form of filing this criminal complaint. It is clearly a motivated which is impermissible.

13. The respondent, who appeared in person, referred to the following judgments of Hon'ble Supreme Court to contend that High Court should not ordinarily interfere at an interlocutory stage of a criminal proceedings pending in the subordinate court, if from the facts alleged in the complaint, which are to be accepted at their face value at the stage, the ingredients of the offence alleged are made out:

- 1. P. Vijayapal Reddy and Others v. The State (Govt. of India)-AIR 1978 Supreme Court 1590.*
- 2. Mrs. Dhanalakshmi v. R. Prasanna Kumar and Others-AIR 1990 Supreme Court 494.*

There is no quarrel with the proposition of law explaining the powers of High Courts under Section 482 Cr.P.C. as described in the aforesaid two judgments. At the same time, it cannot be denied that if the High Court is of the opinion that the proceedings are misuse and abuse of the process of law, High Court has inherent power to quash the same. In

State of Haryana v. Bhajan Lal-AIR 1992 SC 604, the Hon'ble Supreme Court discussed in detail the ambit and scope of High Courts' power under Section 482 of the Cr.P.C. and summerised the position by mentioning as many as seven principles and principle No. 7 is relevant for our purposes which would be applicable in the instant case. The present case is squarely covered by the aforesaid principles. I am also persuaded by the two recent judgments of the Hon'ble Supreme Court in the case of Ruchi Agarwal Vs. Amit Kumar Agrawal and Others – (2005) 3 SCC 299 and Mohd. Shamim and Others Vs. Nahid Begum (Smt) and Another – (2005) 3 SCC 302 for taking this view. Consequently, summoning order dated 7th October, 2004 is quashed and the complaint filed by the respondent is dismissed. No cost.”

17. Consequently, to prevent abuse of process of Court and to secure ends of justice, this Court directs quashing of present CC No. 2299/10/06 pending before Mr. Sanjay Jindal, JSCC/ASCJ (NW), Rohini, Delhi as well as any other proceedings arising therefrom. Respondent-complainant is also directed to pay costs of present proceedings to petitioner which are assessed at ₹ 10,000/-.

18. The petition and pending application stand disposed of in the aforesaid terms.

MANMOHAN, J

AUGUST 16, 2012

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