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

*Judgment delivered on: 19<sup>th</sup> January, 2016*

+ CRL.M.C. 1055/2013

ASHOK VERMA

..... Petitioner

Represented by: Mr. P.S. Bindra, Adv.

versus

STATE GOVT. OF NCT OF DELHI  
& ORS.

..... Respondents

Represented by: Mr. Arun Kr. Sharma, APP  
for State with Inspr. Amar Deep Sehgal, PS-  
EOW.

Mr. Neeraj Grover and Mr. Aditya Singh,  
Advs. for R2 and R3.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. By of the present petition filed under Section 482 read with Section 439 (2) Cr.P.C., petitioner seeks directions thereby setting aside the order dated 17.12.2012 passed by Id. Addl. Sessions Judge, East-01, Karkardooma Courts, Delhi in Crl. Rev. No. 77/2012.

2. Initially, respondent nos. 2 and 3 were admitted on interim bail till 21.05.2012 as compromise arrived at between the parties. Thereafter, petitioner appeared before the Court on 25.05.2012 and submitted that pursuant to the compromise, the clearing of the

cheques were stopped by the respondents mentioned above on the ground that petitioner was not cooperating in furnishing the confirmations of the Income Tax Department about the investment made by him and thus, the compromise had come to deadlock situation. Accordingly, ld. ACMM decided the applications of the respondent nos. 2 and 3 on merit.

3. The counsel of the petitioner submitted before the ld. ACMM that the anticipatory bail of the respondent nos.2 and 3 was dismissed by this Court on several occasions and also by the Hon'ble Supreme Court. It was argued before the said Court that respondents mentioned above stated before the High Court that they would make the payment, but they failed to do the same and therefore, the anticipatory bail was not granted by the High Court. He further submitted that when the respondents were in judicial custody son of respondent no. 2 namely Sumit Kathuria on their behalf entered into an agreement dated 25.11.2011 whereby, the petitioner agreed to pay an amount of Rs.7.5 Crore and as per the said compromise, admittedly, respondent nos. 2 and 3 paid an amount of Rs.2.75 Crore. Despite the fact that the respondent nos. 2 and 3 failed to make the complete payment, ld. ACMM has granted bail.

4. Being aggrieved, petitioner preferred the Crl. Rev. 77/2012, same was also dismissed observing therein that the first court granted the bail on merit, despite the fact that respondent nos. 2 and 3 failed to fulfil the terms of the compromise.

5. Ld. Counsel for the petitioner further submits that respondent no. 2 and 3 could not even get the interim protection from the High Court as well as the Supreme Court. Thereafter, they entered into an agreement and given the impression to the court below that they are ready to pay the amount as per the settlement. Accordingly, the first Court below had given an interim protection to the respondent nos. 2 and 3, however they could not pay the amount. Despite, they were admitted on bail vide order dated 25.05.2012. Both the orders were taken by the respondents mentioned above on the pretext that they will make the payment. However, thereafter they took u-turn.

6. Ld. Counsel submits that the ground taken before the first Court was that the petitioner did not fulfil his part regarding the confirmations from the Income Tax Department. However, in this regard Income Tax Department vide its letter dated 08.04.2015 conveyed to the Registrar of this Court as under:

*“As per above Clause, the Second Party i.e. Ashok Verma will give income tax confirmation for M/s. Harsha Associates Pvt. Ltd. or any other sister concern of Harsha Group to the concerned department before 15.01.2012. In this connection, the Second Party produced photocopies of the documents vide receipts dated 13.01.2012, 27.03.2012, 02.05.2015 and also copy of statement recorded on Oath dated 10.03.2015 and the same have been verified with reference to original records. Since the confirmations were submitted by Shri Ashok Verma within the period stipulated in the compromise Agreement dated 25.11.2011 as referred above, therefore, the same appears to be bona fide.”*

7. Ld. Counsel appearing on behalf of the petitioner submits that respondent nos. 2 and 3 gave an impression before the trial Court that the compromise came to a deadlock situation.

8. On the other hand, ld. Counsel appearing on behalf of respondent nos. 2 and 3 submits that the present petition is not maintainable. Initially, the order was passed by ld. ACMM vide order dated 25.05.2012. Being aggrieved, the petitioner filed the Revision Petition and the same was dismissed vide order dated 17.12.2012. Thus, under the garb of present petition filed under Section 482 read with Section 439 (2) Cr.P.C. petitioner seeks a second revision against the order dated 25.05.2012, which is barred under Section 397 (3) and 399 (3) Cr.P.C.

9. To strengthen his arguments, ld. Counsel has relied upon a case of ***Deepti @ Arati Rai v. Akhil Rai and Ors. JT 1995 (7) S.C. 175*** wherein the Hon'ble Supreme Court held that the High Court should have taken care to verify the record before accepting the concession made by the learned Government Advocate. It should have also applied its mind to the aspect that the second Revision application after dismissal of the first one by Sessions Court is not maintainable and that inherent powers under Section 482 of the Code cannot be utilized for exercising power, which are expressly barred by the Code.

10. Further relied upon the case of ***Dharampal and Ors. v. Smt. Ramshri and ors., AIR 1993 Supreme Court 1361*** whereby it is well settled that inherent power under Section 482 of the Code cannot be

utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the Second Revision at the instance of first respondent. Accordingly, impugned order of the Higher Court was set aside.

11. Ld. Counsel for the respondent nos. 2 and 3 further submitted that even as per the MOU if the respondents mentioned above could not make the payment for any reason, even then, once the bail is granted on merits, that cannot be disturbed by the Sessions Court or by this Court.

12. To strengthen his arguments, Id. Counsel has relied upon a case of ***Sandeep Choudhary and Anr. v. State and Ors. 2007 (94) DRJ 604***, whereby this Court held as under:

*“5. In the present case, bail application of the petitioners was never decided on merits. The petitioners were arrested and were in custody when their bail applications were considered. On 25.8.2005, interim bail was granted for a period of one month on the submission of the parties to enable them to arrive at amicable settlement. This interim bail was extended from time to time in subsequent orders after taking note of the fact that the petitioners had entered into separate MOU with all the three respondents. Thus, de hors the talks of settlement, there was no consideration by the trial court as to whether the petitioners were entitled to bail or not and only interim bail was granted when the petitioners expressed their desire to settle the matter and thereafter to make the payment in accordance with the said settlement. The judgment in the case of Biman Chatterjee (supra) shall have no application where regular bail was granted and the question was as to whether such a bail*

*could be cancelled if the accused was not co-operating in the compromise talks. The Court subsequently observed that though in the original order granting bail there was a reference to an agreement of the parties to have a talk of compromise, there was no submission made to the Court that there would a compromise or that the accused would take back his wife. In the present case as mentioned above, the petitioners wanted sojourn for some time to enable them to settle the matter and in view of this, the Court granted the petitioners a breather. The petitioners cannot take advantage of such an interim protection and thereafter breach the agreement and still say that the interim protection should be confirmed. If the petitioners are not in a position to make the payment, as alleged by them, it would be proper for the trial court to consider the bail application of the petitioners on merits and to decide as to whether the petitioners have backed out, for whatever reason. They cannot continue to enjoy such an interim protection. Therefore, while dismissing this petition and upholding the order of the trial court, matter is remanded back to the learned ASJ to consider the bail application of the petitioners on merits de hors the MOU or breach thereof. Since the petitioners have been granted interim protection, that shall remain operative for a period of two weeks during which period the petitioners shall apply for regular bail before the trial court and the said bail application shall be considered on its own merits without being influenced by the MOU or breach thereof. The petition is disposed of in the aforesaid terms.”*

13. He also relied upon a case ***Pritpal Singh v. State of Bihar, 2001 (8) SC 604***, whereby the Hon’ble Supreme Court held as under:

*“The Magistrate cancelled the bail granted to the appellant solely on the ground that the terms of the compromise had not been complied with. To say the least, the ground on which the petition for cancellation of*

*bail was made and was granted is wholly untenable. It is our view that the order if allowed to stand will result in abuse of the process of Court. The High Court clearly erred in maintaining the order. Therefore, the order passed by the Magistrate cancelling the bail and the order of the High Court confirming the said order are set aside. The bail order is restored. The appeal is allowed. Appeal allowed.*

14. I heard ld. Counsel for the parties.

15. It is pertinent to mention here that respondent nos. 2 and 3 had already moved 7 applications before the passing of the impugned order as is evident from the order dated 18.08.2011 passed in bail application no. 1135/2011. In the said order, this Court noted that respondent nos. 2 and 3 have indulged in forum shopping and have grossly abused the processes of law. The purpose of Section 438 Cr.P.C. is not to grant anticipatory bail to a person who tries to play with the processes of law. Accordingly, this Court dismissed 8<sup>th</sup> bail application of the respondents mentioned above with cost of Rs.1,00,000/- each.

16. Thereafter, respondents preferred an SLP (Crl.) 7218/2011 before the Supreme Court which was also dismissed and they were directed to surrender before the Trial Court.

17. Accordingly, respondent nos. 2 and 3 surrendered before the Trial Court and were sent to police custody for four days from 22.11.2011 to 25.11.2011. Meanwhile, the son of the respondent no. 2 entered into an agreement with the petitioner and agreed to pay an amount of Rs.7.35 Crore. As per the settlement, respondents have

already paid an amount of Rs.2.75 Crore, which is not disputed. However, thereafter, failed to comply the terms and conditions of compromise dated 25.11.2011.

18. It is not in dispute that if there is a glaring illegality and injustice stares the Court in the face, then under Section 397 (3) Cr.P.C. the court may exercise the inherent power to annul that illegality or injustice as held in the case of ***D.D. Chadha v. State (NCT of Delhi) 1999 (2) JCC 572 (Delhi) decided on 20.08.1999.***

19. It is not the case of the petitioner that the respondents are required for custodial interrogation. They already remained in police custody for four days. Thereafter, the prosecution moved an application before the Trial Court to get the extension of police remand. Same was refused and the respondents were directed to send to the judicial custody. It is not in dispute that after the investigation, chargesheet has already filed. However, the charges are yet to be framed. The impugned order as noted above was passed in the year 2012. Complete 3 years have passed. They are no more required for custodial interrogation. Thus, at this stage it would not be appropriate to cancel the bail granted to the respondents as said order is not qua the MOU but on merit.

20. Accordingly, finding no merit in the instant petition, same is dismissed.

**SURESH KAIT, J**

**JANUARY 19, 2016/jg**