

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

+ CRL.M.C. 728/2016 & CrI.M.A. 3113/2016

Date of Decision : March 30th, 2016

MANMOHAN GULATI & ORS Petitioners

Through Mr.Praveen Kumar, Advocate.

versus

M/S HANUNG TOYS & TEXTILES LIMITED Respondent

Through Mr.Y.P. Luckria, Adv. for respondent.

WITH

+ CRL.M.C. 731/2016 & CrI.M.A. 3123/2016

MANMOHAN GULATI & ORS Petitioners

Through Mr.Praveen Kumar, Advocate.

versus

M/S HANUNG TOYS & TEXTILES LIMITED Respondent

Through Mr.Y.P. Luckria, Adv. for respondent.

AND

+ CRL.M.C. 732/2016 & CrI.M.A. 3125/2016

MANMOHAN GULATI & ORS Petitioners

Through Mr.Praveen Kumar, Advocate.

versus

M/S HANUNG TOYS & TEXTILES LIMITED Respondent

Through Mr.Y.P. Luckria, Adv. for respondent.

AND

+ CRL.M.C. 733/2016 & CrI.M.A. 3127/2016

MANMOHAN GULATI & ORS Petitioners

Through Mr.Praveen Kumar, Advocate.

versus

M/S HANUNG TOYS & TEXTILES LIMITED Respondent

Through Mr.Y.P. Luckria, Adv. for respondent.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petitions under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) read with Article 227 of the Constitution of India have been filed by the petitioners for quashing of common order dated 05.02.2016 vide which they were declared as proclaimed offenders, common attachment order dated 26.10.2015, proclamation issued under Section 82 Cr.P.C. vide order dated 17.07.2015 passed by the learned Metropolitan Magistrate in Complaint Case Nos.134/11/12, 135/11/12, 136/11/12 & 137/11/12 and for setting aside common order dated 21.12.2015 passed by the learned Additional Sessions Judge dismissing the revision petitions Nos.113/15, 114/15, 115/15 &

116/15 of the petitioners.

2. The facts, in brief, are that the respondent/complainant had filed four criminal complaints under Section 138 of the Negotiable Instruments Act for total amount of Rs.39,62,452/- for dishonor of cheques. Apart from these criminal complaints, five other complaints were filed by the respondent/complainant against the petitioners. During the pendency of the complaints, a settlement was arrived at between the parties. On 20.04.2012, the petitioner no.1, 2 & 4 were admitted to bail, whereas petitioner no.3 was admitted to bail on 13.07.2012. On 02.11.2012, the petitioner nos.2 & 3 did not appear before the Court, therefore, NBWs were issued against them. On 13.12.2012, NBWs were cancelled. On 15.02.2013, matter was settled between the parties for a sum of Rs.1.39 crores. The petitioners did not appear before the Court on 06.05.2013, therefore, NBWs were issued against them. On 10.07.2013, proceedings under Section 82 Cr.P.C. were initiated against them. However, due to making of part payments, the proceedings remained stayed. On 05.02.2014, the Court issued fresh process under Section 82 Cr.P.C. since the petitioners failed to make the payment. On 17.04.2015, the Authorized Representative of the respondent/complainant made statement to the effect that the settlement had failed between the parties after having received Rs.87 lacs.

3. On 17.07.2015, application for cancellation of process under Section 82 Cr.P.C. was dismissed and fresh process was issued. On 26.10.2015, process under Section 83 Cr.P.C. was issued and vide order dated 05.02.2016, the petitioners were declared proclaimed

offenders. Thereafter, the petitioners preferred revision petitions, which were dismissed vide common order dated 21.12.2015. Feeling aggrieved of the same, present petitions have been filed by the petitioners.

4. Argument advanced by the learned counsel for the petitioners is that out of the total settled amount, a sum of Rs.87 lacs was paid to the respondent and the petitioners were facing difficulty in arranging the remaining sum of Rs.52 lacs. It is argued that the process under Section 82 Cr.P.C. has been issued without issuing warrant. There was no reason to believe that the petitioners have absconded or concealed themselves. It is further argued that on 17.07.2015 when fresh process was issued, there was no reason to believe that the petitioners were absconding and therefore without issuing warrants of arrest, issuance of process under Section 82 Cr.P.C. is against the statute. It is further argued that the Court had no power to declare the petitioners proclaimed offenders for offence under Section 138 of the N.I. Act as it can be initiated only in case of heinous crime.

5. In support of the above contentions, learned counsel for the petitioners has relied upon a judgment in the case of ***Sanjay Chaturvedi v. State 2006 SCC OnLine Del 1126*** in which it has been observed that the process under Section 82/83 Cr.P.C. should not be initiated when an accused is represented through counsel and it is not a case where he is absconding or evading the Court process. On similar point, judgment in the case of ***Suresh V. Chaturvedi v. AES Control Pvt. Ltd. 2003 (70) DRJ 210*** has been relied upon.

6. On the other hand, learned counsel for the respondent has

argued that the petitioners are avoiding the Court and have stopped appearing in the Court. Instead of appearing before the Trial Court, the petitioners approached this Court questioning the process issued by the Court and declaring them proclaimed offenders. It is further argued that the petitioners neither fulfilled the terms of the settlement nor appeared before the Trial Court.

7. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

8. It is apparent from the record that the petitioners after obtaining bail from the Trial Court stopped appearing in the Court and that is why non bailable warrants were issued against them. When they did not appear before the Court despite issuance of NBWs, the Court issued the process under Section 82 Cr.P.C. against them. It is only thereafter, they appeared before the Court and entered into settlement with the respondent/complainant. The Trial Court stayed the process under Section 82 Cr.P.C. but once settlement failed, the petitioners again absented themselves from the Court. The contention of the petitioners that they cannot be treated as absent as they had been appearing through counsel and moving application for personal exemption, cannot be a ground to run away from the Court. The petitioners were well aware of the issuance of process under Sections 82 and 83 Cr.P.C. but despite the same, they did not appear before the Trial Court. Instead of appearing before the Trial Court, the petitioners approached the revisional Court and after dismissal of the revision petition, the Trial Court declared the petitioners as proclaimed offenders.

9. The conduct of the petitioners, as reflected from the record, shows that they were admitted to bail on 20.04.2012 & 13.07.2012. NBWs were issued against petitioner no.2 & 3 on 02.11.2012. On 13.12.2012, NBW was cancelled and the matter was adjourned to explore the possibility of settlement between the parties. On 15.02.2013, the matter was settled between the parties. The petitioners again did not appear before the Court on 06.05.2013 and NBWs were issued against them. On 10.07.2013, process under Section 82 Cr.P.C. was issued against the petitioners. On 30.08.2013, the petitioners made the payment of installment, therefore the process under Section 82 Cr.P.C. was stayed and it continued uptill 05.02.2014. Thereafter, process under Section 82 Cr.P.C. was issued on 05.02.2014 and then again on 25.08.2014. On 11.11.2014, application for cancellation of process under Section 82 Cr.P.C. was moved and the proceedings were stayed. On 17.04.2015, authorized representative of the respondent/complainant made the statement before the Court that the settlement has failed between the parties. On 17.07.2015, application moved by the petitioners for cancellation of process under Section 82 Cr.P.C. was dismissed and fresh process was issued against them. On 26.10.2015, process under Section 83 Cr.P.C. was issued. After the dismissal of the revision petition filed by the petitioners vide order dated 21.12.2015, the petitioners were declared proclaimed offenders on 05.02.2016.

10. It is pertinent to mention that due to non-resumption of proceedings before the Trial Court only due to absence of the petitioners, the file has been consigned to record room which could be

revived only after appearance or arrest of the petitioners.

11. From the above mentioned conduct of the petitioners, it is clear that the petitioners are intentionally evading the Court and ran away from the Court. Apparently, the petitioners are absconders which culminate into the fact that they do not have any relief under Section 482 Cr.P.C. The petitioners have failed to make out their case to show the abuse to the process of law or the case to secure the ends of justice.

12. In view of the above discussion, this Court is of the considered opinion that the petitioners have failed to make out any case for setting aside the impugned orders passed by the Courts below. This is not a fit case to exercise the jurisdiction under Section 482 Cr.P.C.

13. The petitions are accordingly dismissed.

14. Applications Crl.M.A. Nos.3113/2016, 3123/2016, 3125/2016 and 3127/2016 are also disposed of.

MARCH 30, 2016
dd

(P.S.TEJI)
JUDGE