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

+ CRL.M.C. 5365/2014

ASHOK JOON

..... Petitioner

Through Mr.Rajesh Ranjan, Adv.

versus

STATE & ORS.

..... Respondent

Through Ms.Meenakshi Chauhan, APP for the
State.

Ms.Latika Wadhera, Adv. for Ms.Juhi
Arora, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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17.08.2016

The present petition has been filed by the petitioner for setting aside the order dated 30th September, 2014 and to pass the order for arrest or detention of the respondent nos.2 to 4 to enforce the payment in pursuance to the settlement.

This court has heard the counsel for the petitioner and gone through the records.

The operative portion of the impugned order dated 30th September, 2014 reads as under:-

“However, perusal of the file shows that despite seeking repeated adjournments to arrange funds after settling the present complaint, accused has failed to honour his undertaking. Even costs have been imposed upon him for this purpose.

However, this Court is not in agreement with the contention of Ld. Counsel for the complainant that accused should be convicted merely on the basis of his statement of settlement and resettlement. When the settlement arrived between the parties, matter was at the stage of remaining cross-examination of the complainant.”

In pursuance of the same, the Court directed as under:-

“However, a cost of Rs.15,000/- is imposed upon the accused for repeatedly seeking adjournments to honour his undertaking and still not making payment as per his undertaking.”

The matter was adjourned for 3rd November, 2014 for remaining cross-examination of the complainant.

Perusal of the order dated 30th September, 2014 shows that the trial under Section 138 of the Negotiable Instruments Act is being proceeded with and during the trial, there was the settlement and resettlement between the parties.

This court is of the considered opinion that the job of the Court is to proceed with the trial under Section 138 of the Negotiable Instruments Act when the claim is based upon the dishonouring of the cheque. I agree with the decision of the Court below that there could not be any conviction or detention of the accused until the complainant establishes his case that he is entitled to the payment and that the cheque has been dishonestly dishonoured and that the accused is liable to be penalised under the Negotiable Instruments Act for the imprisonment or the compensation.

The view taken by the Court below needs to be appreciated inasmuch as he should not compel any party to make payment during the pendency of the trial on the behest of the complainant.

In such scenario, the present petition is without any merit and is, therefore, dismissed.

P.S.TEJI, J

AUGUST 17, 2016/aa