

S.No.125

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-30688 of 2018 (O&M)

Date of Decision:02.08.2018

Amar Singh Shahi Petitioner

Vs.

Jaspal Singh and another Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Parampreet Singh Paul, Advocate
 for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed for quashing of the order dated 06.07.2018 (Annexure P.6) passed by Judicial Magistrate Ist Class, SAS Nagar, Mohali in criminal complaint No.NIA/718/05/12/2016 whereby the application filed by the petitioner for dropping of the proceedings in the complaint filed under Section 138 of NI Act has been dismissed.

A sole argument of the learned counsel for the petitioner is that since the matter was referred to the Lok Adalat and the Lok Adalat had passed an award, therefore, the trial cannot go on after that since the award of the Lok Adalat is executable as a decree of a Civil Court.

Counsel for the petitioner has relied upon a judgment of the Supreme Court in 2012(1) RCR (Criminal) 102, **K.N. Govindan Kutty Menon Vs. C.D. Shaji** and another judgment passed by Madras High Court reported in 2010(6) RCR (Criminal) 669, **M/s Valarmathi Oil**

Industries and another Vs. M/s Saradhi Ginning Factory.

Having heard the learned counsel for the petitioner and perused the file, this Court finds that the argument of the learned counsel for the petitioner is not sustainable in the facts of the present case. A bare perusal of the file shows that the matter was put up before the Lok Adalat on 10.02.2018. It is reflected from the order dated 10.02.2018 that although the compromise had been effected between the parties and statements were recorded to that effect, however, on the request of the parties, the case was further adjourned to 11.04.2018; for making payment of the first instalment as per the statement made by present petitioner. Therefore, instead of passing a final award and disposing of the case, the Lok Adalat only adjourned the case for 11.04.2018, at the request of the parties. The another order of the same date shows the statement of the present petitioner, wherein he had made the payment of Rs.50,000/- on the same day. However, for further payments, he had given out a payment schedule starting from 11.04.2018 uptill 11.10.2018; providing for monthly instalment of an amount of Rs.1 lakh or amount of Rs.2 lakhs. The order dated 11.04.2018 has been placed on record. However, the next order dated 02.05.2018 passed by the Judicial Magistrate Ist Class gives an indication that on 11.04.2018, the case was adjourned for witnesses of the complainant, since the present petitioner had not stuck to the schedule of the payment and had not made any payment of instalment as agreed by him. Therefore, the order dated 02.05.2018 records that no CW is present. This order further shows that on again repeating the statement for making the payment by the present petitioner, another and last opportunity was granted to the petitioner for

making the entire payment by 14.05.2018.

Instead of making payment on 14.05.2018, the present petitioner moved an application for dropping the proceedings against him in view of the alleged award made by the Lok Adalat on 10.02.2018. The reply of that application was sought by the trial Court. The case was further adjourned. Ultimately, that application was dismissed by the trial Court vide the impugned order. Hence, the present petition has been filed by the petitioner.

While dismissing the application filed by the present petitioner, the trial Court has recorded that instead of making the payment as per the statement made by him, the petitioner has tried to abuse the process of law; by getting the case put up before Lok Adalat on the pretext that he is ready to make the payment. However, after getting the statements recorded, he has not paid even a single instalment as per his undertaking and the statement made by him before the Court. The trial Court also appreciated the judgments cited by the petitioner but held that the Hon'ble Supreme Court's judgment is not helpful to the case of the petitioner for the purpose of dropping of the proceedings of complaint under Section 138 of NI Act.

Section 20 of the Legal Services Authorities Act, 1987 prescribes the procedure where the matter is referred to the Lok Adalat. The same is reproduced hereinbelow:-

“20. Cognizance of cases by Lok Adalats.--(1) Where in any case referred to in clause (i) of sub-section (5) of section 19,

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the

court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat :

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference

before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).”

A bare perusal of this Section shows that once the matter is taken up by the Lok Adalat or referred to it by the Court, then the Lok Adalat shall dispose of the matter in view of the compromise entered into by the parties. However, if the proceedings cannot be terminated by the Lok Adalat at its own level for the reasons mentioned in the Section, then the record of the case shall be returned to the trial Court from where reference had been come to it. In the present case, the order dated 10.02.2018 shows that the Lok Adalat had not disposed of the matter at all. Instead, the matter was sent back to the trial Court, at the request of counsel for the parties, to ensure the

payments to be made by the petitioner as per the agreed schedule of payment. Hence, it cannot be said that, legally, any award passed by the Lok Adalat exists in this case. Needless to say that the statements of the party cannot have the effect of the decree of a Civil Court nor the same can be executed like the decree. It is only the final award passed by the Lok Adalat which has been given the status of being the decree of the Civil Court and it is only the final award passed by the Lok Adalat, which could be taken to the Civil Court for its execution. Hence, the argument of the learned counsel for the petitioner that since there was an award passed by the Lok Adalat, therefore, the matter could not have been proceeded further by the trial Court, is liable to be rejected.

This Court does not find anything wrong in the order passed by the trial Court. A bare perusal of the proceedings on the file shows that the petitioner has made an abject attempt to misuse the process of the Court by, first, getting the matter referred to the Lok Adalat, then agreeing to a schedule of payment, getting the case adjourned before the Lok Adalat, getting repeated adjournments on the pretext of making payment of the amount as per the agreed schedule and, ultimately showing his true colour, by moving an application for dropping of the proceedings of the complaint. Therefore, the intention of the petitioner throughout has been doubtful and is an attempt to, somehow or the other, delay the proceedings and to avoid the orders from the Court.

Even otherwise, the complaint filed under Section 138 of NI Act is under the statutory provisions of a particular Act. Once instituted before it as a complaint, the trial Court is under legal obligation to take the

trial to its logical end unless prohibited by another statutory provision or terminated by some higher Court. Counsel for the petitioner has failed to point out any other provision which debars proceedings further in the complaint under Section 138 of NI Act, except to stress upon the fact that the matter was referred to Lok Adalat. As observed above, Lok Adalat had never disposed of the complaint nor passed any final award. Hence, the interim order or mere reference to a Lok Adalat, is not a sufficient ground to terminate the proceedings of the complaint midway; as is being sought to be done by the petitioner in the present proceedings.

Although learned counsel for the petitioner has relied upon the judgment mentioned above, however, this Court finds that judgments are distinguishable on the facts of the case. In the case relied upon by counsel for the petitioner, the final award was passed. The proceedings were sought to be terminated by placing on record of the complaint case the award passed by the Lok Adalat. However, that was not accepted by the trial Court and hence, the matter reached upto the Supreme Court, leading to quashing of complaint. In the present case, as stated above, there is no final order passed by the Lok Adalat. Therefore, judgment cited by counsel for the petitioner is not applicable.

Finding no illegality or infirmity in the order passed by the trial Court, the present petition is dismissed, being devoid of any merits.

August 02, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No