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

DECIDED ON : 26th APRIL, 2018

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CRL.REV.P. 478/2014

S C SOOD

..... Petitioner

Through : Mr.Girish Chandra, Advocate with
Mr.Sankalp Agrawal & Mr.Rahul Pandey, Advocates.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through : Mr.Ravi Nayak, APP.
Mr.Prakash Sharma, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present revision petition has been filed by the petitioner to challenge the legality and correctness of an order dated 03.06.2014 of learned Addl. Sessions Judge in Crl.A. 5/2014 whereby the appellate court declined to proceed with disposal of the appeal due to settlement arrived at between the parties before Lok Adalat. The petition is contested by the respondent No.2 (hereinafter as 'respondent').

2. I have heard the learned counsel for the parties and have examined the file. Indisputably, the respondent was convicted for commission of offence punishable under Section 138 Negotiable Instruments Act by an order dated 23.08.2013. By an order dated 26.08.2013, the respondent was sentenced to undergo RI for three

months and to pay compensation of twice the cheque amount i.e. ₹2,50,000/- within a period of 30 days to the complainant.

3. The respondent challenged the conviction before the appellate court. By an order dated 07.10.2013, the substantive sentence was suspended pending appeal on deposit of the amount equivalent to the value of the cheque. On 21.10.2013, the respondent sought permission from the appellate court to deposit the said amount in three installments which was allowed. The respondent did not comply with the orders.

4. On 28.02.2014, the respondent's counsel urged the court to refer the matter to National Lok Adalat for settlement. It was opposed by the petitioner primarily because the respondent had no sincere intention to resolve it. It was noted in the order that the respondent's grievance could be taken care of by holding that if the matter remained unsettled before Lok Adalat, every effort would be made to dispose of the appeal at the earliest. The matter was referred to National Lok Adalat scheduled for 12.04.2014.

5. On 12.04.2014, statements of both the parties were recorded. The respondent agreed to pay ₹50,000/- on 25.04.2014 and the balance amount ₹75,000/- on 15.05.2014. The petitioner gave a statement that in case the payments were made on the said two dates by the respondent, he would compound the matter and make necessary statement before the court. Accordingly, taking into consideration the statements of both the parties, the matter was sent back to the court concerned for 25.04.2014.

6. On that day, respondent's counsel informed that only ₹19,000/- could be arranged against ₹50,000/- to be paid in terms of the Lok Adalat settlement. The petitioner declined to accept part payment and asked for the complete payment of ₹50,000/-. The matter was listed for 03.05.2014 for that purpose. Record reveals that the respondent failed to comply with the orders. The appeal was accordingly listed for disposal. By the impugned order, the learned appellate court dismissed the appeal holding that the settlement dated 12.04.2014 being an award of the Lok Adalat is to be taken as 'decree' capable of execution by civil court. Aggrieved by the said findings, the present revision petition has been filed.

7. Perusal of the record reveals that from the very inception, the petitioner was not interested for reference of the matter for settlement to Lok Adalat as he was apprehensive of the respondent's intention not to make the payment; it happened true. Despite recording statements before the National Lok Adalat where he agreed to pay certain payments on two dates, the respondent without any plausible reason avoided to make the said payment. Till date, the petitioner has been deprived of the compensation amount awarded by the Trial Court despite the respondent being held guilty for commission of offence punishable under Section 138 Negotiable Instruments Act,

8. The impugned order cannot be sustained as the National Lok Adalat had not passed any 'award' on the basis of the statements recorded by both the parties. Lok Adalat had only recorded the terms and conditions whereby the matter was to be compounded before the

court concerned on making payment of the amount stated therein. Only on making the said payments as agreed before the Lok Adalat, the petitioner was to compound the offence under Section 138 Negotiable Instruments Act before the appellate court. Since, no such payment was made by the respondent in terms of the statements, the matter could not be compounded and the appeal preferred by the respondent remained alive before the appellate court. The respondent cannot be permitted to take advantage of his own wrong. Firstly, he did not honour the statement made by him before the Lok Adalat on 12.04.2014 and secondly, by the impugned order, he was given the benefit of acquittal under Section 138 Negotiable Instruments Act without deciding the appeal preferred by the respondent. In the absence of any payment, the learned Appellate Court could not have dismissed the appeal giving clean chit to the respondent for commission of the offence under Section 138 Negotiable Instruments Act for which he was duly convicted by the Trial Court. Since the payments as agreed were not paid by the respondent, the Appellate Court should have disposed of the appeal filed by the respondent on merits.

9. *‘K.N.Govindan Kutty Menon vs. C.D.Shaji’*, (2011) INSC 1159 relied upon in the impugned judgment is of no assistance to the respondent. In the said proceedings, there was no ‘conviction’ under Section 138 Negotiable Instruments Act. In that case, the matter was referred to the Lok Adalat to explore possibility of settlement. Lok Adalat after recording the settlement he passed an ‘award’. It was of course to be treated as ‘decree’ for the purpose of execution. The

position is not so in the present proceedings. After the conviction recorded by the Trial Court, the respondent was to compound the offence by settlement on making payment of the settled amount and only in that eventuality the learned appellate court could have disposed of the appeal as settled / compounded. Since the appeal / offence was not 'compounded' by the complainant / petitioner, there was no occasion for the learned appellate court to dispose of the said appeal asking the complainant to approach civil court for execution of the 'award' of the Lok Adalat which was deemed to be a 'decree' capable of execution by civil court.

10. In the light of above discussion, the impugned order dated 03.06.2014 is set aside. The revision petition is allowed.

11. The appellate court shall proceed with the appeal on merits. The parties shall appear before the appellate court on 23rd May, 2018.

(S.P.GARG)
JUDGE

APRIL 26, 2018 / tr