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

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Judgment delivered on: 10.08.2018

+ CRL.M.C. 5859/2014 & CrI. M.C. 19963/2014

SURESH SINGHAL

..... Petitioner

versus

A K ACHARYA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Bhupesh Narula, Advocate.

For the Respondents: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

10.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. None appears for the Respondent. He has already been declared a proclaimed offender by the trial court.
2. Petitioner impugns order dated 25.11.2014 whereby the revision petition of the petitioner impugning order dated 08.05.2014 of the trial court directing the petitioner to refund the amount of Rs. 35,000/- to the respondent was dismissed.
3. Petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act contending that a cheque for a sum of Rs. 1,25,000/- issued by the respondent had been dishonoured.

4. Subsequently, there was a settlement with the respondent on 18.11.2013 in mediation wherein it was agreed that the respondent shall pay a sum of Rs. One lakh to the petitioner as full and final settlement of all the claims. It was also agreed that in case the respondent failed to pay the said amount he shall pay additional fine of Rs. 25,000/-

5. A sum of Rs. 35,000/- was paid, however, respondent failed to pay remaining amount.

6. The Revisional court by order dated 05.04.2014 directed the trial court to proceed further with the proceedings as respondent was not come forward to pay the balance amount.

7. By the impugned order dated 08.05.2014 the Trial Court directed the petitioner to pay back the amount of Rs. 35,000/- received by him under the settlement. It is this direction that the petitioner is aggrieved by.

8. Learned counsel for the petitioner submits that since the respondent had undertaken to pay the amount of Rs. One lakh and in default to further payment, penalty of Rs. 25,000/-, the petitioner could not have been directed to refund the said amount of Rs. 35,000/- on the failure of the respondent to abide by his undertaking/settlement.

9. Learned counsel for petitioner points out that the respondent

has since been declared a Proclaimed Offender by order dated 03.09.2015 and the proceedings have been consigned to the Record Room.

10. Learned Counsel further, under instructions, submits that the petitioner is willing to deposit the said amount of Rs. 35,000/- with the trial court subject to outcome of the proceedings. He submits that in view of the fact that the respondent has been declared as Proclaimed Offender, as and when the proceedings are commenced before the trial court, on the apprehension of the respondent, the petitioner shall deposit the said amount of Rs. 35,000/- with the trial court so that the further proceedings can be commenced.

11. In view of the above, the impugned orders dated 25.11.2014 of the Revisional Court and order dated 08.05.2014 of the trial court are set aside with a direction that as and when the proceedings commence before the trial court, the petitioner shall deposit Rs. 35,000/-. Said amount shall not be released to the respondent and shall be subject to outcome of the proceedings before the trial court.

12. The petition is disposed of in the above terms.

13. Order *dasti* under the signature of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 10, 2018/‘rs’