

\$~14 & 15

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th August, 2018

+ CRL.M.C. 3529/2015 & Crl.M.A. 12562/2015

M/S VANASTHALI INVESTMENTS PRIVATE LIMITED

..... Petitioner

Through: Mr. Madhav Khurana, Mr.
Hemant & Mr. Ankit Bhatia,
Advts.

versus

STATE & ORS

..... Respondents

Through: Mr. Akshai Malik, APP for the
State.

+ CRL.M.C. 3530/2015

M/S VANASTHALI INVESTMENTS PRIVATE LIMITED.....

Petitioner

Through: Mr. Madhav Khurana, Mr.
Hemant & Mr. Ankit Bhatia,
Advts.

versus

STATE & ORS

..... Respondents

Through: Mr. Akshai Malik, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Both these petitions have been filed invoking the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India to raise questions as to the correctness, legality and propriety of similar orders passed by the Metropolitan Magistrate on 21.07.2015 in the context of two different complaint cases (CC Nos. 50/10/12 and 51/10/12) which were instituted by the petitioner (hereinafter the complainant) against the private party respondents herein, each alleging offence under Section 138 of the Negotiable Instruments Act, 1881. By the impugned orders, the application of the private party respondents (the accused) for refund of the amount of Rs. 38 lakhs that had been earlier paid by them to the complainant were granted and the Metropolitan Magistrate called upon the petitioner (the complainant) to submit the same in the form of fixed deposit receipt.

2. Though the private party respondents (the accused persons) were duly served and had even appeared through counsel, seeking to resist these petitions by way of replies earlier submitted, at the hearing, there is no appearance on their behalf.

3. The background facts leading to the petitions at hand being filed, simply put, are that aside from the two criminal cases involving offences under Section 138, Negotiable Instruments Act, 1881, the parties were involved in other litigation, this including the criminal cases arising out of FIR No. 1278/2010 that had been registered at the instance of the petitioner by police station Sector 20, Noida (U.P.) involving offences punishable under Sections 467/468/471/420/506 of

Indian Penal Code, 1860 (IPC). The parties were referred to mediation by orders dated 18.10.2012 and 24.10.2013 in the proceedings in the complaint cases from which the present petitions arise. They entered into a settlement agreement dated 22.01.2014, copy whereof has been submitted with these petitions. Going by the terms of settlement, arrived at through mediation, the accused persons were to pay to the complainant, a total amount of Rs. 62,50,000/- and out of the said amount Rs. 38 lakhs was to be paid as the first instalment, this inclusive of Rs. 33 lakhs which was passed on in the form of demand draft at the time of signing of the settlement agreement and the balance of Rs. 5 lakhs which had already been deposited in the court of Metropolitan Magistrate and was agreed to be released to the complainant with no objection from the accused persons. It was agreed that the complainant would cooperate and the accused persons would move Allahabad High Court with the prayer for quashing of the FIR that had been registered in Noida (U.P.). It was further agreed that the balance amount of Rs. 24.50 lakhs would be paid “*the moment*”, the quashing of the FIR “*was done by the competent court of jurisdiction*”.

4. In the wake of the above-mentioned settlement agreement dated 22.01.2014, certain submissions were made before the court of Metropolitan Magistrate that were recorded in the proceedings, similar in both the complaint cases on 22.02.2014. The criminal complaints were not withdrawn. Rather, the matter was deferred for recording of statement for withdrawal of the cases for 29.05.2014. It appears, no

steps were taken immediately for filing of the petition before the High Court of Allahabad for quashing of the afore-mentioned FIR. Yet, on 04.08.2014, while the counsel for the complainant informed the Magistrate that the accused had “*failed to honour his commitments*” and consequently the settlement had not materialized, the accused persons submitted that substantial payment had been made and the petition for quashing of the FIR had “*already been filed*” before the High Court of Allahabad. The Magistrate kept the matters alive and adjourned them for 25.08.2014. Eventually, on 07.10.2014, the submissions to above effect were reiterated and re-recorded in the proceedings common to both the cases, the accused persons through counsel, submitting that they were still willing to honour the settlement and make further payment adding that “*matter has already been filed before the High Court of Allahabad*”.

5. A copy of the petition whereby the prayer for quashing of the FIR of Noida was submitted before the High Court of Allahabad, has been submitted by the petitioner. It would show the petition to be dated 16.11.2014. From this, it naturally follows that the submissions made before the Metropolitan Magistrate on 04.08.2014 and 07.10.2014 about such petition having already been filed were not truthful.

6. Be that as it may, it is clear from the averments on both sides that the settlement agreement dated 22.01.2014 could not be taken to logical end. It is submitted by the counsel for the petitioner that the aforesaid petition for quashing is still pending before the High Court

of Allahabad, it having been once dismissed in default though later restored, the petitioner (the complainant) continuing to be willing to cooperate with such process. But, the fact remains that the balance amount payable in terms of the settlement agreement has also not reached the hands of the petitioner till date.

7. Against the above backdrop, the accused persons (the private party respondents) moved the application seeking restoration of the position as it existed prior to entering into the settlement, which, in simple terms, would mean direction to the complainant to refund the amount of Rs. 38 lakhs which has been received by it under the said settlement agreement. The application made by the accused persons, it appears, was silent and non-specific as to the reasons why the settlement agreement could not fructify. It seems to be scrupulously silent as to the reasons why wrong statements were made before the trial court about the petition for quashing having been filed. In reply to these petitions, an endeavour was made by the accused persons to justify inaction with reference to some title documents not having been handed over though the settlement agreement seems to be silent in such regard.

8. The petitioners are aggrieved by the directions of the Metropolitan Magistrate to refund the amount of Rs. 38 lakhs and in the opinion of this Court, justifiably so. The settlement agreement though entered upon through the process of mediation where the parties had been referred by the criminal court had been arrived at by the parties on their own free will and volition. There was no direction

from the Metropolitan Magistrate for payment to be made. The amount of Rs. 38 lakhs was, thus, paid to the complainant by the accused persons on their own initiation. The question as to whether this amount (assuming it represents the value of the cheques) was due as liability or not will have to be addressed at the trial of the criminal cases which continue to remain pending. The court of Metropolitan Magistrate not having brought about the said payment cannot be converted, midway the process, into a forum for its restitution, refund or recovery. Undoubtedly, at the stage of final adjudication, the criminal court will render findings as to whether any amount was due for payment of which the cheques were issued and, if due, what was the extent of such liability. Suitable directions for restitution, if that were required, can always be passed at such stage.

9. In view of the above, the impugned orders are set aside. The petitions and the applications filed therewith stand disposed of.

R.K.GAUBA, J.

AUGUST 07, 2018

nk