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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th August, 2018

\+ CRL.M.C. 3854/2015 & CRL.M.A. 13709/2015, 4123/2018, 29707-29708/2018

MANOJ KAUL ..... Petitioner

Through: Mr. Madhukar Pandey with Mr. Sumeet Kaul, Mr. Damanjit Kaur & Mr. Shubham Sharma, Advocates.

versus

STATE OF NCT & ANR ..... Respondents

Through: Mr. Akshai Malik, APP for State.
Mr. Rajeev Aggarwal with Mr. Ankit Gupta, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is one of the accused persons (second accused) facing prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act, 1881) in the court of Metropolitan Magistrate in the criminal complaint (CC No.11828/1/2010) instituted by the second respondent, he being one of the directors (authorized signatory) of company M/s. H.M. Informatics Pvt. Ltd. He had moved an application under Section 147

of the N.I. Act, 1881 praying to the Metropolitan Magistrate that the proceedings in the case be closed as the offence had been compounded on account of settlement of the dispute between the parties. His application was declined by the Metropolitan Magistrate by order dated 05.11.2014. He challenged the said order before the Court of Sessions by criminal revision petition No.08/2015 invoking its revisional jurisdiction. His revision petition was dismissed by order dated 17.07.2015. He has come up to this court invoking the inherent power and jurisdiction under Section 482 of the Code of the Criminal Procedure, 1973 (Cr.P.C.) praying for intervention on the contention that the continuation of the proceedings before the trial court is an abuse of the process of law.

2. The learned counsel on both sides, i.e., the petitioner (accused) and the second respondent (the complainant) have been heard at length. The record has been perused.

3. It is pointed out by the counsel for the complainant that the criminal case relates to cheque bearing Nos.204247 dated 14.08.2010 for Rs.9,89,100/- and cheque bearing No.204252, dated 29.08.2010 for Rs.29,99,409/- both drawn on Union Bank of India, Nehru Place Branch, New Delhi, that had been issued by the petitioner as the authorized signatory of the company accused for discharge of its liability towards the complainant for goods (computer hardware and components) that had been supplied. Both the said cheques were returned, upon presentation, unpaid with remarks *"insufficient funds"*, vide cheque returning memo dated 17.09.2010. The complainant

served demand notice on 28.09.2010 in spite of which no payment was made. The criminal complaint was filed in the wake of the said facts within the statutory period.

4. The complaint was contested for some time. On 15.02.2011, however, parties approached the trial court on the basis of a settlement agreement dated 12.02.2011 whereunder the complainant had agreed to withdraw the criminal complaint case on the assurance of payment of Rs.42,90,858/- as full and final settlement of its claim, the petitioner having handed over in such context six post-dated cheques to the complainant. The statements of the parties were recorded by the Metropolitan Magistrate on 15.02.2011. The Magistrate, however, kept the case alive awaiting confirmation of payment.

5. On 23.03.2011, the petitioner and other accused persons did not appear. The complainant informed the trial court that first of the six post-dated cheques, upon presentation, had been dishonoured. The trial court issued non-bailable warrants against the petitioner and other accused. Though the warrants were cancelled later on appearance of the accused, the matter kept hanging fire, the petitioner and other accused persons submitting that they were willing to settle.

6. On 27.06.2011, the petitioner and the other accused submitted a *"fresh schedule of payment"* but the same was not acceptable to the complainant, this submission being recorded on 02.07.2011.

7. The trial commenced with service of notice under Section 251 Cr.P.C. being framed on 12.08.2011. But, at that stage, on account of

absence of one of the accused the plea could not be recorded. Later, the petitioner paid Rupees One lakh to the complainant in the form of demand draft on 29.11.2011, this being followed by some further payments. However, the expectations of the complainant for full and final settlement remained unaddressed.

8. At this stage, it may be mentioned that simultaneously another criminal complaint had come to be filed by the same complainant, it concerning certain other cheques issued in its favour by another company in which the petitioner and other individual accused are directors, they also being, thus, involved in those proceedings. Some payments appear to have been made in the context of the said other case as well.

9. Against the above backdrop, the petitioner filed afore-mentioned applications requesting the trial court to hold that the case had been *"compounded"*. This request having been declined, the order having been endorsed by the revisional court, similar prayer is pressed before this court under Section 482 Cr.P.C. The prayer is resisted by the second respondent, *inter alia,* on the ground that the petitioner is trying to confuse the issue by making endeavour to take advantage of the payments made in the other case against the other company.

10. Reliance is placed by the petitioner on the following observations of the Supreme Court in *Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta, 2017 (4) LRC 287 (SC):-*

"18. From the above discussion following aspects emerge:

(i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CR.P.C will apply and <u>the Court can close the proceedings</u> and discharge the accused <u>on satisfaction that the cheque amount with assessed costs and interest is paid</u> and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, <u>compounding at the initial stage has to be encouraged</u> but is not debarred at later stage subject <u>to appropriate compensation as may be found acceptable to the parties or the Court.</u>

(iii) Though <u>compounding</u> requires consent of both parties, <u>even in absence of such consent</u>, the Court, in the interest of justice, <u>on being satisfied</u> that the complainant has been <u>duly compensated</u>, can in its discretion <u>close the proceedings</u> and discharge the accused.."

(emphasis supplied)

11. In the considered view of this court, the petition at hand is a classic illustration of an accused in a matter involving offence under Section 138 of the Negotiable Instruments Act, 1881 making the complainant (drawee of the cheque) dance around, for years on end (now seven years), taking not only him (the complainant) but also the

courts for a ride. The settlement was reached in February, 2011. Post-dated cheques were handed over the first of which also bounced. In a case relating to dishonor of cheque, this conduct is wholly unacceptable. As observed in *Meters and Instruments Private Limited* (supra), the basic object of the law contained in Section 138 of the Negotiable Instruments Act, 1881 is *"to enhance credibility of the cheque transactions"*. The conduct of the petitioner in issuing a post-dated cheque (pursuant to a settlement) that failed upon presentation is not one that would *"enhance the credibility"* of cheque transactions.

12. The complainant, in the hope of realization of its dues, continued to agree to enlargement of time. Some more money was paid, in bits and pieces, by installments, to some extent, over a prolonged period. In a case of this nature, it is naturally the expectation of the complainant (the creditor) that his entire dues would be settled, and this would include not only the principal amount represented by the cheques but also the interest that would have accrued thereupon. On account of prolonged proceedings, the liability of the accused has only increased. The accused, however, have been in no mood to settle the matter amicably to the satisfaction of the complainant in entirety. Undoubtedly, the provision of Section 258 Cr.P.C. enables the court to direct proceedings to be stopped in a summons case. The court, in the interest of justice, may direct compounding of the offence even in absence of consent of the complainant. But, for such jurisdiction to be exercised, the court has to

be satisfied that the complainant has been duly compensated. It is in this context that the petitioner fails to pass the muster.

13. For the above reasons, the petition at hand is itself found to be an abuse of the process of law. It is dismissed with costs of Rupees two lakhs.

14. The pending applications also stand disposed of.

R.K.GAUBA, J.

AUGUST 09, 2018
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