

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-24043-2019 (O&M)

Date of Decision:- 24.5.2019

M/s Allied Chemical Industries

... Petitioner

Versus

M/s Shiva Dies & Chemical and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nitin Thatai, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking setting aside of order dated 30.4.2019 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Ludhiana, wherein pursuant to the accused not having complied with the terms of the compromise in a criminal complaint under Section 138 of Negotiable Instruments Act and not having made the payment as undertaken, the trial Court ordered for proceedings ahead with the trial and fixed a date for cross-examination of the complainant.

2. Learned counsel for the petitioner while assailing the aforesaid order has submitted that once the accused had not honoured the terms of the compromise after having admitted his guilt and having agreed to pay the entire cheque amount there was no need to hold a trial and that conviction ought to be recorded on the basis of above mentioned statement made by the complainant towards compromise.
3. Learned counsel in this context places reliance upon a Division Bench of Delhi High Court reported as 2017(4) BC 492 Dayawati Vs. Yogesh Kumar Gosain, Delhi High Court.
4. I have heard the learned counsel for the petitioner and have also perused the cited judgment. The relevant extract of above referred judgment from para 118 wherein the formulated questions have been answered reads as follows:

“Question IV: If the settlement in Mediation is not complied with - is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed :

- IV (i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate would pass an order under Section 431 read with Section 421 of the Cr.P.C., 1973 to recover the amount agreed to be paid by the accused in the same manner as a fine would be recovered.
- IV (ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with

the undertaking as well as the orders of the court based thereon, including proceeding under Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.

Question V: If the Mediated Settlement Agreement, by itself, is taken to be tantamount to a decree, then, how the same is to be executed? Is the complainant to be relegated to file an application for execution in a civil court? And if yes, what should be the appropriate orders with respect to the criminal complaint case at hand. What would be the effect of such a mediated settlement vis-à-vis the complaint case?”

V (i) The settlement reached in mediation arising out of a criminal case does not tantamount to a decree by a civil court and cannot be executed in a civil court.

However, a settlement in mediation arising out of referral in a civil case by a civil court, can result in a decree upon compliance with the procedure under Order 23 of the C.P.C. This can never be so in a mediation settlement arising out of a criminal case.

5. The above referred case also pertained to an offence under Section 138 of Negotiable Instruments Act, wherein at one point of time a settlement had been effected amongst the parties but later on the accused did not honour the terms of the settlement and then a question arose as to whether on account of non-compliance of said terms, the Court is required to proceed with the trial on merits or to hold such a settlement as executable as a decree. A perusal of the finding returned by the Division Bench, to which the said matter had been referred, as extracted above, does show that the complainant would have a remedy of recovery in terms of Section 431 Cr.P.C. read

with Section 421 Cr.P.C. to recover the amount as had been agreed to amongst the parties.

6. It has further been held therein that on account of the non-compliance, after having made a specific statement in the Court to pay the amount, the accused would also render himself liable for proceedings under the Contempt of Court Act. However, the said judgment does not mandate that pursuant to such non-compliance, a conviction of the accused for offence under Section 138 of Negotiable Instruments Act can *ipso facto* be recorded on the basis of the statement made by him towards compromise.
7. This Court is of the opinion that whenever any confession is to be recorded in the Court, the accused is required to be made aware of the ramifications of such statement to be made towards his confession before any such statement can be recorded. In the present case the accused was not warned of such ramifications when his statement towards compromise was recorded. In these circumstances it will not be fair to record conviction of the accused solely on the basis of the statement made towards compromise without giving him an opportunity for defending himself in the trial. This Court is fortified by a judgment of this Court in Baldev Raj Vs. Gagandeep Mehta 2015 (38) RCR Criminal 460, P&H.
8. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned order dated 30.4.2019 (Annexure P-4) whereby the trial Court has ordered for proceeding ahead with the trial and for cross-examination of the complainant.

9. The petition is sans any merit and is hereby dismissed.
10. Needless to mention, the petitioner would be at liberty to have recourse to the legal remedies as may be available to him on account of the accused not having made payment in terms of his statement dated 4.1.2019 recorded before learned Judicial Magistrate 1st Class, Ludhiana.

May 24, 2019
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No