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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th August, 2019

+ CRL.M.C. 625/2019

VIKAS AGGARWAL Petitioner

Through: Mr. Surendra N. Mittal,
Advocate

versus

TRIPURARI MANI TRIPATHI Respondent

Through: Mr. Irfan Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted a criminal complaint case (CC No.18672/2016) against the respondent (accused) alleging commission of offence punishable under section 138 of the Negotiable Instruments Act, 1881 having been committed. It appears on the basis of pre-summoning inquiry, the respondent stood summoned as accused.

2. During the course of proceedings that followed, the parties took the dispute to the process of mediation where they entered into a settlement on 13.03.2012, in terms of which the respondent agreed to pay the cheque amount of Rs.45 lacs to the petitioner (complainant) by 31.07.2012. The case thereafter came up before the Metropolitan Magistrate on 21.03.2012 when the report of the said settlement was placed before the court, the case having been adjourned for “part

payment”. It appears that the matter was adjourned on certain dates on which some payment was made by the accused, however, the settlement terms not having been fully complied with.

3. The respondent (accused) thereafter absented himself from the proceedings, this resulting in duress process being issued against him followed by proclamation under section 82 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Upon re-appearance of the accused, on his request, by order dated 15.04.2014, the proclamation was recalled and the case taken to the stage of framing of notice (under section 251 Cr.P.C.).

4. It is against the above backdrop that an application was moved by the petitioner (complainant) for recovery of the balance amount under the settlement as amount of fine or land revenue. The request was declined by the Metropolitan Magistrate by order dated 07.08.2018.

5. On the subsequent date, i.e., 05.10.2018, the Metropolitan Magistrate framed notice under section 251 Cr.P.C. and having recorded the plea (of not guilty) tendered by the accused, listed the case for consideration of application, if any, moved by him during the interregnum under section 145(2) of the Negotiable Instruments Act, 1881.

6. The above mentioned orders dated 07.08.2018 and 05.10.2018 of the Metropolitan Magistrate are assailed by the petition at hand under section 482 Cr.P.C., the prime submission being that after the settlement through mediation, the procedure adopted by the

Metropolitan Magistrate is inappropriate, not *in sync* with the ruling of a division bench of this court reported as *Dayawati vs. Yogesh Kumar Gosain, 2017 SCC Online Del 11032*, the balance amount under the settlement liable to be recovered as fine.

7. Against a more or less similar backdrop brought before this court in two other petitions led by Crl.M.C.2827/2019, *Rajkumar Kuchhal vs. Loyal Logistics Pvt. Ltd. & Anr., decided on 05.08.2019*, this court has noted the law, and dealt with the issue as under:-

“6. The following observations of the division bench in Dayawati vs. Yogesh Kumar Gosain, (2017) 243 DLT 117 (DB) are germane for decision on the issue raised here:-

“115. There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure. Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was voluntary and not obtained because of any force, pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate

order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.

116. In having so proceeded, there is a satisfaction of the voluntariness and legality of the terms of the settlement of the court and acceptance of the terms thereof as well as a specific order in terms thereof. Consequently, the amount payable under the settlement, would become an amount payable under an order of the criminal court.

117. So far as the disputes beyond the subject matter of the litigation is concerned, upon the settlement receiving imprimatur of the court, such settlement would remain binding upon the parties and if so ordered, would be subject to the orders of the court.”

(emphasis supplied)

7. On directions of this court, the petitioner has placed on record copies of the proceedings recorded by the Metropolitan Magistrate in the wake of settlement agreement dated 26.11.2016. On perusal, it is noted that no formal settlements of the parties were recorded nor any inquiry held as to the voluntariness of the settlement agreement nor any effective order passed by the Metropolitan Magistrate at that stage adopting the settlement agreement as the final disposition of the two complaint cases. In these circumstances, there is nothing shown from which it could be inferred that the settlement had received the imprimatur of the court.

There is no enforceable order of the Magistrate vis-à-vis the settlement.

8. *The court of Metropolitan Magistrate is not a forum for recovery of money. It is a criminal court which is called upon to adjudicate on the complaint alleging offence under section 138 of the Negotiable Instruments Act, 1881. Undoubtedly, the said offence is compoundable. No doubt, if the parties are so inclined the court encourages settlement of dispute in such matters. But then, the court cannot be used by either side to protract and prolong the proceedings as if it were executing the settlement that may have been arrived at outside the court without the proceedings in the complaint case having been brought to an end in the manner envisaged in Dayawati (supra).*

9. *The fact remains that in the present case no effective order bringing the criminal proceedings to an end within the letter and spirit of Dayawati (supra) was ever passed. Since the respondents have failed to abide by the terms of the settlement, they cannot derive any benefit of the settlement agreement. In these circumstances, it is the obligation of the petitioner to prosecute the complaint cases further in accordance with law.*

10. *The view taken by the Metropolitan Magistrate that the cases have to be brought to trial, thus, cannot be faulted. This court endorses the said view taken by the courts below."*

8. As in the case of *Raj Kumar Kuchhal* (supra), in the case at hand also there have been no formal proceedings drawn with reference to the settlement agreement through mediation. No inquiry was made by the Metropolitan Magistrate as to voluntariness of the

settlement terms nor any formal or effective order was passed adopting the said settlement as the final disposition by the court.

9. In these circumstances, adopting the reasons and the view taken in *Raj Kumar Kuchhal* (supra), the present petition is dismissed.

R.K.GAUBA, J.

AUGUST 09, 2019

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