

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

+ **CRL. M.C. 2270/2020**

Date of Decision: 01.12.2020

IN THE MATTER OF:

RANBIR BHARDWAJ

..... Petitioner

Through: Mr.Vishwendra Verma, Advocate.

Versus

SOHAN LAL GUPTA

..... Respondent

Through: Mr.Praveen Suri, Advocate.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

CRL. M.A. 16127/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CRL. M.C. 2270/2020 and CRL. M.A. /2020 (to be numbered)
DIRECTION

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of order dated 06.10.2020 passed by learned ASJ-04, West, Tis Hazari Courts, Delhi in Criminal Revision No. 412/2019 titled *Ranbir Bhardwaj v. Sohan Lal Gupta*.

2. Mr. Vishwendra Verma, learned counsel for the petitioner submits that the present proceedings arise out of the complaint case no. 19244/16 filed under the provisions of the Negotiable Instruments Act with respect to dishonour of cheque dated 05.06.2015 for Rs. 3,92,000/-. He submits that during the pendency of the proceedings, the trial court wrongly relied upon the Memorandum of Settlement dated 05.12.2018. Learned Counsel for the petitioner contended that the said settlement agreement was not entered into by the petitioner with his own will. The petitioner was coerced into entering the settlement agreement. Learned counsel further contended that the trial court could not have passed the order dated 20.07.2019 under Section 421 read with Section 431 Cr.P.C. as a reading of the aforesaid sections would show that same only relate to a fine. On the same reasoning, he has challenged the impugned order passed by the Sessions Court whereby the order of the Trial Court was upheld.

3. Mr. Praveen Suri, learned counsel for the respondent, on the other hand, has supported the impugned order. He submits that the Memorandum of Settlement dated 05.12.2018 (annexed as Annexure P-3 with the petition) was entered into between the parties with their own free will whereby the parties settled three complaint cases pending between them being CC Nos. 19244/2016, 1257/2016 and 1037/2016. He submits that thereafter, the parties appeared along with their respective counsels before the Trial Court acknowledging the factum of entering into the Memorandum of Settlement. Furthermore, on 05.12 2018, the statements of the parties were also recorded before the Trial Court. The complainant as well as the petitioner identified their signatures on the settlement agreement. As per the Memorandum of Settlement, the

petitioner was required to pay an amount of Rs. 25.92 lacs along with 20% interest per annum. While the principal amount of Rs.25.92 lacs was to be paid on or before 25.01.2019, the amount on account of interest was payable on or before 25.02.2019.

4. I have heard learned counsels for the parties and have also gone through the case records.

5. Coming to the first contention raised by learned counsel for the petitioner, it is seen that the Memorandum of Settlement, which was duly notarised, was a comprehensive document executed between the parties. The parties arrived at the settlement when the matter was pending at the stage of final arguments. The parties after executing the agreement appeared before the trial court and acknowledged signing the same. The joint statement of both the parties were recorded on oath that day. The parties not only identified their signatures on the agreement but also, undertook to abide by it. Subsequently, the parties also acted in terms of the settlement in as much as the petitioner paid a sum of Rs. 45,000/- in their other matter which was also settled by the Memorandum of Settlement.

6. The Trial Court after recording the proceedings on 05.12.2018, listed the matter on 06.03.2019 for verification of the compliance. However, on that day, it was informed that the petitioner didn't honour his undertaking as he failed to pay in the terms of the settlement. On the next date, i.e., on 27.04.2019, the complainant filed an application under Section 421 read with Section 431 Cr.P.C. before the Trial Court seeking attachment of the petitioner's properties. The petitioner sought time to file reply but failed to file the same despite imposition of cost of Rs.

2,000/- Rather, for non-appearance, bailable warrants were also issued against him.

7. On 20.07.2019, the petitioner appeared before the Trial Court along with his counsel and submitted that as the original papers were not in his possession, he could not arrange to pay the entire settlement amount. It was further submitted on his behalf that in pursuance to the settlement, he was willing to pay an amount of Rs.2 lacs on that day. Learned counsel for the complainant objected and submitted that the property papers were already with the present petitioner. However, on request, the parties were again referred to mediation to explore the possibility of settlement and were directed to report back. As the parties could not arrive at any further settlement, the trial court passed the order dated 20.07.2019 whereby warrants of attachment of the petitioner's property were issued under Section 421 read with Section 431 Cr.P.C. It was directed that the settlement amount would be recovered from the petitioner as fine amount in terms of Section 431 Cr.P.C.

8. Thereafter, the petitioner filed an application seeking recall of the order dated 20.07.2019 however, the same also came to be dismissed vide order dated 17.10.2019.

9. Later, the order dated 17.10.2019 was challenged by the petitioner before the Sessions Court, which came to be dismissed by way of the impugned order dated 06.10.2020.

10. From the above discussion, this Court has no doubt that the petitioner has tried to delay the trial proceedings on one aspect or the other. While the matter was listed for final arguments, he voluntarily entered into a settlement with the complainant and later reneged from it.

The settlement was accepted by the Trial Court and also acted upon by the petitioner.

11. It is also pertinent to note that on 06.10.2020, learned ASJ had dismissed another revision petition between the parties with respect to the Complaint Case No. 1257/2016 involving the same Memorandum of Settlement. The said order was challenged by the petitioner before this Court by way of Crl. M.C. 2071/2020 and the same was dismissed by a Coordinate Bench vide order dated 23.10.2020 by observing that the Settlement Agreement dated 05.12.2018 was entered into by the petitioner voluntarily and there was no perversity or illegality in the impugned order passed by the Sessions Court.

12. So far as the petitioner's second contention that the Trial Court could not have passed the order under Section 421 read with Section 431 Cr.P.C. is concerned, I deem it apposite to refer to the decision of the Division Bench of this Court in Dayawati v. Yogesh Kumar Gosain reported as **2017 SCC OnLine Del 11032**, wherein the following questions came up for consideration:

“1. What is the legality of referral of a criminal compoundable case (such as one u/s. 138 of the NI Act) to mediation?

2. Can the Mediation and Conciliation Rules, 2004 formulated in exercise of powers under the CPC, be imported and applied in criminal cases? If not, how to fill the legal vacuum? Is there a need for separate rules framed in this regard (possibly u/s. 477 of the Cr.P.C.)?

3. In cases where the dispute has already been referred to mediation - What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the

case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example, when the payments are spread over a long period of time, as is usually the case in such settlement agreements)?

4. 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?

5. 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? 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?"

13. Question nos. 3 & 4, which are germane to the contention raised in the present case, were answered in the following manner:

"...Proceedings before the court

III(x) The magistrate would adopt a procedure akin to that followed by the civil court under Order XXIII of the C.P.C.

III(xi) The magistrate should record a statement on oath of the parties affirming the terms of the settlement; that it was entered into voluntarily, of the free will of the parties, after fully understanding the contents and implications thereof, affirming the contents of the agreement placed before the court; confirming their signatures thereon. A clear undertaking to abide by the terms of the settlement should also be recorded as a matter of abundant caution.

III(xii) A statement to the above effect may be obtained on affidavit. However, the magistrate must record a statement of

the parties proving the affidavit and the settlement agreement on court record.

III(xiii) The magistrate should independently apply his judicial mind and satisfy himself that the settlement agreement is genuine, equitable, lawful, not opposed to public policy, voluntary and that there is no legal impediment in accepting the same.

III(xiv) Pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of the settlement terms entered into by and between them. This order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 of the Cr.P.C.

III(xv) Upon receiving a request from the complainant, that on account of the compromise vide the settlement agreement, it is withdrawing himself from prosecution, the matter has to be compounded. Such prayer of the complainant has to be accepted in keeping with the scheme of Section 147 of the NI Act. (Ref.: (2005) CriLJ 431, Rameshbhai Somabhai Patel v. Dineshbhai Achalan and Rathi)

At this point, the trial court should discharge/acquit the accused person, depending on the stage of the case. This procedure should be followed even where the settlement terms require implementation of the terms and payment over a period of time.

III(xvi) In the event that after various rounds of mediation, the parties conclude that the matter cannot be amicably resolved or settled, information to this effect should be placed before the magistrate who should proceed in that complaint on merits, as per the procedure prescribed by law.

III(xvii) The magistrate should ensure strict compliance with the guidelines and principles laid down by the Supreme Court in the pronouncement reported at MANU/SC/0319/2010 : (2010) 5 SCC 663, Damodar S. Prabhu v. Sayed Babalal H and so far as the settlement at the later stage is concerned in (2014) 10 SCC 690 Madhya Pradesh State Legal Services Authority v. Prateek Jain.

III(xvii) We may also refer to a criminal case wherein there is an underlying civil dispute. While the parties may not be either permitted in law to compound the criminal case or may not be willing to compound the criminal case, they may be willing to explore the possibility of a negotiated settlement of their civil disputes. There is no legal prohibition to the parties seeking mediation so far as the underlying civil dispute is concerned. In case a settlement is reached, the principles laid down by us would apply to settlement of such underlying civil disputes as well.

In case reference in a criminal case is restricted to only an underlying civil dispute and a settlement is reached in mediation, the referring court could require the mediator to place such settlement in the civil litigation between the parties which would proceed in the matter in accordance with prescribed procedure.

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. 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.”

(emphasis added)

14. Thus, in view of the above exposition of law, the second contention raised by learned counsel for the petitioner is meritless and is rejected. I find no illegality or perversity in the impugned order passed. On the other hand, this Court is of the view that the petitioner is guilty of not only delaying the proceedings but has also, failed to comply with his undertaking before the Trial Court. Accordingly, the present petition is dismissed with cost of Rs.5,000/- to be deposited by the petitioner with the Delhi High Court Legal Services Committee within a period of two weeks from today. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 01, 2020

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