

15.09.2022

Court No.35
Item No. 1

d.g.

CRR 73 of 2016

**Sankar Prasad Ghosh
Vs.
M/s. Calcutta Traders**

Mr. Anirban Mitra,
Md. Wasim Akram,
Mr. Amit Halder,
Mr. Akash Ghosh.

... For the petitioner

Mr. Arijit Ganguly,
Ms. Debjani Sahu.

... for the State

Mr. S.K. Bhattacharya,
Mr. Dipta Dipak Banerjee.

... for the OP no. 2

All parties are represented in hearing of this case today.

It is submitted on behalf of the petitioner that an amount of Rs.4 lakhs has already been remitted to the complainant in terms of the settlement which the complainant and the petitioner mutually agreed to.

It is further submitted that after payment of such money, which was mutually agreed to between the parties, there remains no point for adjudication in this matter, any further.

The present case was filed by the petitioner against the judgment and order dated 22nd December, 2015 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Kolkata. By dint of the same, the Court convicted and sentenced the petitioner with other directions for payment of stipulated fine etc.

During pendency of the present revisional case, both parties have arrived into mutual settlement and pursuant to that, an amount of Rs.4 lakhs has already been paid by the petitioner to the complainant.

During pendency of this matter, question arose that if in terms of decision of the Hon'ble Supreme Court reported in **(2010) 5 SCC 663 Damodar S. Prabhu vs. Sayed Babalal H.**, the petitioner would be

further required to pay, at the rate of 15 per cent of the cheque amount, as costs.

Learned Advocate on behalf of the petitioner has referred to the other latest unreported judgment of the Hon'ble Apex Court ***Rajendra vs. Nandlal***, dated 6.08.2019 (Diary No. 45002 of 2018) wherein the Hon'ble Apex Court has been pleased to hold that during pendency of the appeal if a settlement is arrived at between the parties, in such a situation, in an appropriate case, the costs as per the guidelines laid down in Damodar S. Prabhu's case may be waived by the Court while directing for acquittal of the accused person.

Learned Advocate appearing for the petitioner has submitted that when calculated, the mutually agreed amount of money for settlement of dispute, would come to be more than the total of cheque amount plus 15 per cent costs, as per the guideline set out in Damodar S. Prabhu's case.

The guidelines set out in Damodar S. Prabhu's case is a protective measure to safeguard the person, who has received the cheques for discharging the legally enforceable debt owed to him by the accused/convict. While setting out the guidelines, Hon'ble Apex Court was very much alive to a probable situation, where the complainant might have to face any coercion, force or other extraneous circumstances to be compelled to come to a settlement. Cost is also to compensate the complainant for illegal withholding of his sum.

Therefore, such guideline of the Hon'ble Court may not be waived on every drop of a hat.

Excepting sufficient reason to justify such waiver, a court should not venture upon to acknowledge any other mode of settlement than only that as in terms of the settled guidelines.

In this case, the settlement amount is more than the total of the cheque amount plus 15 per cent of the same. Therefore, prejudice of the complainant, as contemplated while setting up the guidelines in order to protect him from those, may not be a matter of concern, in this case. In this case, the proposed settlement and its terms may not have any prejudicial effect to the interests of the complainant.

Learned Advocate appearing for the Opposite party, concurs with the submissions made on behalf of the petitioners, as to the facts

stated.

To my mind, the proposition/decision of the Hon'ble Apex Court in Rajendra's case squarely applies to the present case.

It is found that during pendency of the present revisional case, the parties have arrived at a settlement and a particular amount of money was agreed upon by both the parties.

It is on record, that the said amount of money has already been paid by the accused person to the complainant. Accordingly, in this case in view of the particular facts and circumstances of the same and by applying the principles in Rajendra's case the 'costs' portion may be waived.

Hence, this Court has no hesitation to accept settlement between the parties and, as such, it is found that since both the parties have come to a consensus and the terms has already been complied with, there is no further point for adjudication in the present revisional case.

It is directed that the order and judgment of the Trial Court dated 22nd August, 2014 is quashed, the verdict of the court of conviction and sentence of the accused person/present petitioner is set aside. The petitioner is acquitted.

Accordingly, CRR 73 of 2016 is disposed of.

(Rai Chattopadhyay, J.)