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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1073/2022 & CRL. M.A. 4628/2022**

Judgement reserved on: 19.05.2023

Judgement pronounced on : 02.08.2023

RAGHUVINDER SINGH Petitioner

Through: Mr. Vineet Mehta and Mr. Mukul
Saluja, Advocates.

versus

RAJIV CHADHA Respondent

Through: Mr. Anuj Arora and Ms. Deekshi L.
Sarkar, Advs. with respondent in
person.

CORAM:
HON'BLE MS. JUSTICE POONAM A. BAMBA

JUDGEMENT

POONAM A. BAMBA, J.:

1.0 Vide this petition under Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 03.02.2022, passed by the Ld. Metropolitan Magistrate (N.I. Act), Central-02, Tis Hazari Courts, Delhi in Complaint Case bearing CIS No. 519453/16, titled “Rajiv Chadha vs. Raghuvinder Singh” whereby, the petitioner’s application u/S. 311 of Cr.PC was dismissed.

2.0 It is submitted by the petitioner that the respondent had filed a complaint case against him under Section 138, The Negotiable Instruments Act, 1881 (**NI Act**) regarding dishonour of cheque bearing no. 998466 dated 24.05.2014 for an amount of Rs.1,92,21,836/- drawn on Oriental Bank of



Commerce, Saket Branch, New Delhi, on account of discharge of his existing liability. The petitioner was summoned and had appeared in the said complaint case on 01.02.2017. Notice was framed under section 251 Cr.PC against him, to which he pleaded not guilty. Thereafter, he had filed an application under section 145(2) of the N.I. Act denying the liability, and had disclosed his plea of defence that he and the respondent were partners in one future realtor company and during the period 2006-2009, they jointly did the business along with another partner Manish Jain; and his cheque books were in the possession of the respondent. The respondent had taken out one signed cheque leaflet and had fraudulently misused the same in 2014. The contents filled in the same were not in his handwriting. The petitioner had no liability to pay the cheque amount. Petitioner had sought permission to cross examine the respondent. Vide order dated 27.02.2018 the application of the petitioner under section 145(2) of the N.I. Act was allowed and the petitioner was permitted to cross-examine the respondent and the matter was adjourned for the respondents' cross examination to 30.06.2018; on 30.06.2018, his earlier counsel was out of station and therefore, could not appear. On the first date itself, the petitioner's right to cross-examine the respondent and the complainant's evidence was closed.

2.1 It is further submitted by the petitioner that thereafter, the matter was settled and the petitioner had entered into a Memorandum of Understanding (MOU) with the respondent for payment of a settled amount of Rs.1,00,00,000/- (Rupees One Crore Only) in four installments by selling his 4 flats at Sector 73, Village Sarfabad, Noida, UP. In the meanwhile, physical



functioning of the courts was suspended due to Covid-19 pandemic. Settlement could not be given effect to due to reasons beyond the control of the petitioner. The petitioner tried to abide by the terms and conditions of the settlement thereafter, but could not succeed. Accordingly, on 23.12.2021, the petitioner expressed his inability to adhere to the settlement before the Ld. MM and his intent to proceed with the matter on merits.

2.2 It is also submitted that thereafter, the petitioner filed an application under section 311 Cr.P.C. for recalling of the complainant/respondent for his cross examination. Vide impugned order dated 03.02.2022, the Ld. MM dismissed the petitioner's application u/S. 311 Cr.P.C. without appreciating that the petitioner's right to cross-examine was closed on the first date.

3.0 On the other hand, the respondent vide his reply has submitted that in the settlement/MOU dated 13.08.2019, the petitioner has specifically admitted that he took a loan of Rs.35,00,000/- from the respondent/complainant. He has further admitted about the agreement and extension agreement dated 03.06.2008, issuance of the cheque in question and also the pendency of the proceedings u/S. 11 of the Arbitration Act. The petitioner has even admitted his liability and agreed to pay the settlement amount of Rs.1crore to the respondent/ complainant. Pursuant to settlement, the petitioner even paid Rs.8 lakhs. The petitioner having admitted his liability towards the cheque in question, the question of cross examination of the complainant does not arise. The Ld. Magistrate, therefore, rightly dismissed the petitioner's application u/S. 311 Cr P. C.



3.1 Ld. counsel for the respondent also submitted that even otherwise, the petitioner does not deserve any opportunity. Notice was framed on 01.02.2017 granting time to the petitioner to file application u/S. 145(2) NI Act. But, the said application was filed only when cost was imposed upon the petitioner vide order dated 18.05.2017. Even after the filing of the application, the petitioner sought adjournments for arguments on one pretext or the other and a further cost of Rs.10,000/- was imposed on the petitioner. Said application was finally allowed on 27.02.2018 i.e. after one year and 5 dates of hearing. Considering his conduct, the petitioner's opportunity to cross examine the respondent/ complainant was rightly closed by the Ld. MM on 30.06.2018, when adjournment was sought by the petitioner for the cross-examination as the petitioner had been responsible for the delay in disposal of the respondent's complaint.

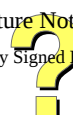
3.2 Ld. counsel further submitted that even after entering into the settlement and admitting his liability, the petitioner did not comply with the terms of settlement; the cheques given by the petitioner in terms of the settlement were dishonored. It is further submitted that as per the settlement, the petitioner was required to make the payment of Rs.2 lakh each on 25.08.2019, 13.09.2019, 13.10.2019 and 13.11.2019 and another payment of Rs.23 lacs on 23.02.2020 i.e. before the pandemic struck. However, the petitioner did not pay even a single penny. Compelled by the same, the respondent filed a contempt petition before the High Court of Delhi titled as "*Rajiv Chadha vs Raghuvinder Singh Cont. Case (C) no. 424/2020*"



wherein, the petitioner paid a sum of Rs. 8 Lakhs to the respondent/complainant. After making of the said payment before the High court in Contempt petition, the petitioner moved an application u/S. 311 CrPC before the Ld. Trial Court on 27.03.2021. On the same day, the petitioner also filed a copy of the settlement before the Ld. MM and undertook to make the payment of 1st instalment of Rs. 23 Lakhs as agreed in the settlement or to pay at least a sum of Rs. 10,00,000/- to the respondent/ complainant and sought four months' time to make the payment. But, on 23.12.2021, the petitioner appeared before the court and stated that he was unable to comply with the settlement and wanted the matter to be proceeded with on merits. Ld. MM then proceeded with the case and vide impugned order dated 03.02.2022 dismissed the petitioner's application u/S. 311 Cr.P.C. duly taking into account, the past conduct of the petitioner. Thus, this petition is liable to be dismissed with heavy cost.

4.0 I have duly considered the submissions made on behalf of both the sides.

5.0. Perusal of the record shows that the complaint under Section 138 NI Act was filed on 25.07.2014 before the court of Ld. M.M. at Tis Hazari Courts. Cognizance of the offence u/S. 138 NI Act was taken on 05.03.2015. Vide order dated 28.10.2015, fresh notice was issued to the petitioner/ accused returnable on 29.01.2016. As the petitioner did not appear, bailable warrants were issued against him returnable on 08.04.2016, which remained unexecuted. Fresh bailable warrants were issued for 31.05.2016. The





petitioner appeared on 31.05.2016 along with counsel and stated that he was willing to explore the possibility of settlement. He was admitted to bail. The Ld. M.M referred the matter to Mediation Cell, Tis Hazari Court for appearance of the parties on 06.06.2016, listing the same before the court on 06.08.2016. On 06.08.2016 as well as on the next date of hearing i.e. 17.09.2016, the petitioner did not appear before the Ld. M.M.. However as the matter was still pending before the Mediation Cell, the complaint was adjourned to 24.10.2016. Vide report dated 06.10.2016, Mediation Centre, Tis Hazari Courts reported that none for the accused/petitioner herein appeared and returned the matter as unsettled noting that the complainant/respondent herein stated that the petitioner/accused was not keen on settling.

5.1. Record further shows that none appeared for the petitioner/accused on 24.10.2016, the date fixed before the Ld. M.M. As the matter was received as unsettled and none appeared, NBWs were issued against the petitioner returnable on 07.12.2016. Before the next date of hearing, the petitioner filed an application for cancellation of NBWs, which were recalled vide order dated 16.11.2016 with the warning to the petitioner/accused to be careful in future and the matter was listed for 07.12.2016. On 07.12.2016, the petitioner again stated that he was willing to settle the matter and accordingly the matter was adjourned to 23.01.2017 for settlement, if any, or framing of notice. On 23.01.2017, the petitioner sought one week's time to settle the matter and the matter was again adjourned to 01.02.2017.

5.2 The record also shows that finally, notice u/S. 251 Cr.PC was framed

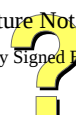




against the petitioner on 01.02.2017. At request of the petitioner, the matter was adjourned to 18.03.2017 for moving of appropriate application u/S. 145(2) N.I. Act, directing that the same be filed prior to the next date of hearing with the advance copy to the respondent herein. As no application u/S. 145(2) N.I. Act was filed, one more opportunity was given to the petitioner, subject to cost, adjourning the complaint to 18.05.2017, which was then listed for arguments on 15.09.2017. On 15.09.2017, the petitioner did not appear and the matter was adjourned for further proceedings to 10.11.2017. The petitioner did not appear even on the next date of hearing i.e. 10.11.2017 and an advocate appeared on his behalf and sought exemption. Though, no ground for exemption was mentioned in the application, on the oral request of the advocate, the exemption was allowed, subject to cost of Rs.10,000/- and the matter was adjourned to 27.02.2018 for consideration of the petitioner's application u/S. 145(2) N.I. Act and appearance. On 27.02.2018, the petitioner's application under Section 145 (2) NI Act was allowed and the matter was listed for cross-examination of the respondent. on 30.06.2018. On 30.06.2018, instead of cross-examining the respondent herein, adjournment was sought by the petitioner. The said request was disallowed. The respondent was examined and discharged and the matter was listed for statement of the accused/petitioner on 27.07.2018. On 27.07.2018, none appeared on behalf of the petitioner. However the matter was adjourned to 19.09.2018, in view of the submission of the respondent herein that mediation was going on between the parties in the Mediation Cell, Delhi High Court. Thereafter, the matter was adjourned to 19.09.2018 and then to 04.02.2019.



5.3 Record further reveals that on 04.02.2019 again, none on behalf of the petitioner appeared. On the submission of the respondent that no settlement could be arrived at between the parties, Ld. Magistrate considering that the petitioner was deliberately not appearing before the court to delay the proceedings, directed issuance of NBWs and notice to surety was issued for 05.06.2019. The matter was taken up on 06.06.2019 (05.06.2019 having been declared as a holiday). Though NBWs remained unexecuted, on appearance of the proxy counsel for the petitioner and at his oral request, NBWs were stayed till the next date of hearing and the matter was adjourned to 06.08.2019. On 06.08.2019 again, there was no appearance on behalf of the petitioner herein despite repeated calls. Considering that the petitioner was intentionally avoiding the process to delay the proceedings, NBWs against him and notice to surety were again issued for 19.09.2019. As NBWs remained unexecuted, on 19.09.2019, the Ld. Magistrate directed initiation of proceedings u/S. 82 Cr.P.C. against the petitioner adjourning the matter to 04.12.2019. However, before the next date of hearing i.e. on 07.11.2019, an application filed by the petitioner for cancellation of NBWs, was taken up. Though there was no appearance on behalf of the complainant/respondent herein, the Ld. Magistrate considering the petitioner's submission that the matter has been settled between the parties and that petitioner is ready to pay as per the settlement, proceedings u/S. 82 Cr.P.C. were recalled, subject to cost and the matter was put up for the date already fixed i.e. 04.12.2019.





5.4. It is seen that on 04.12.2019, the matter was adjourned to 27.01.2020 recording that the matter is at the stage of settlement between the parties before the Mediation Cell, High Court of Delhi. On 27.01.2020, parties reported that the matter has been settled before the Mediation Cell, High Court of Delhi. The order also records that the petitioner handed over two cheques bearing numbers 190237 dated 16.02.2020 and 190238 dated 20.02.2020, drawn on Axis Bank to the complainant/respondent herein. In view of which, the matter was adjourned to 20.03.2020.

5.5 Thereafter, apparently, in view of onset of COVID-19 pandemic, the matter was taken up on 29.08.2020, which order reads :

“CC No. 519453/16
29.08.2020

As per the office order no. 26/DHC/2020 dated 30.07.2020 passed by Hon’ble High Court of Delhi, all the matters except evidence matter are to be taken up through video conferencing.

AT 11.00 a.m.

Present : Accused in person through VC.
None for the complainant.

It is submitted on behalf of the accused that the matter is settled in the Hon’ble Court of Delhi and **he is making the payment as per the settlement and the payments has to be done within 2 years.**

Put up for further payment/further proceedings on 09.02.2021.

(...)
MM(C-02)/Delhi
29.08.2020

AT 11.30 a.m.

File taken up at the request of the complainant.



Present : Complainant in person through VC.

None for the accused.

It is submitted on behalf of the complainant that **on 27.01.2020, the accused has handed over two cheques drawn on Axis Bank to the complainant, but both the cheques were dishonoured.**

It is submitted that the accused has not informed the court regarding the dishonour of these cheques.

Put up for the date already fixed i.e. 09.02.2021.

(...)

MM(C-02)/Delhi

29.08.2020”

5.6 In view of the false submission made before the court, the respondent herein filed an application u/S. 340 Cr.P.C. against the petitioner for which notice was issued but remained unserved. Thereafter, the matter was taken up for physical hearing on 25.11.2020 in view of the office order of the High Court dated 27.08.2020. As the notice of application u/S. 340 Cr.P.C. had been duly served on the petitioner through Whatsapp on 9810076860 which had blue ticks showing that the message had been seen, but none appeared ; and also considering that even earlier the petitioner had not been appearing, bailable warrants were again issued against the petitioner for 07.12.2020. On 07.12.2020 again, none appeared for the accused/petitioner and bailable warrants were issued against the petitioner for 04.01.2021. The petitioner along with the counsel put in appearance through video conferencing on 04.01.2021. Matter was listed for consideration on the respondent's application u/S. 340 Cr.PC and thereafter, also for the statement of the accused/petitioner u/S. 313 Cr.PC, on 09.02.2021, 06.03.2021 and then on 27.03.2021. The petitioner did not file reply to the application u/S. 340 Cr.PC despite final opportunity. But later, he stated that he had not received





the copy of the said application. In the interest of justice, another opportunity was given to the petitioner to file the reply within a week adjourning the matter to 27.03.2021 for the petitioner's statement u/S. 313 Cr.PC and arguments on the respondents' application u/S. 340 Cr.P.C. Order dated 27.03.2021 reads :

“ ...
CC No. 519453/2016
27.03.2021

Present : Sh. Anuj Arora, Ld. counsel for the complainant along with complainant in person.
Sh. Manjeet Singh Ahluwalia, Ld. Counsel for accused alongwith accused in person.

Matter is at the stage of SA under Section 313 Cr.P.C.

Reply has been filed on behalf of the accused to the application under Section 340 Cr.P.C., filed on behalf of the complainant. Taken on record. Copy of the same has been supplied to the accused for the complainant in Court today.

An application under Section 311 Cr.P.C has been filed on behalf of the accused seeking to cross examine the complainant. Taken on record. Copy of the same has been supplied to the counsel for the complainant in Court today.

Ld. counsel for the accused has filed copy of settlement agreement dated 13.08.2019, which was executed between the parties before the Hon'ble High Court of Delhi, in Court today. Taken on record. Ld. Counsel for the complainant admits that the same is the copy of the concerned settlement as stated.

Accused requests the Court for a period of four months to make payment of first instalment of Rs. 23 lacs, as per the settlement between the parties. He undertakes to pay at least an amount of Rs. 10 lacs before the NDOH to show his bonafide and willingness to comply with the settlement agreement.

In the interest of justice and with the consent to the complainant, payment as undertaken to be made by the accused, be paid on or before the NDOH.

Put up for purpose fixed on 09.07.2021 at 02:00 p.m.

(...)
MM (NI Act)-02, (Central), THC



Delhi/ 27.03.2021”

5.7 Thereafter, the matter was taken up on the respondent’s application on 07.08.2021 submitting that despite undertaking, the petitioner has not made payment and seeking direction to the petitioner to make payment/ to comply with the undertaking as recorded in the order dated 27.03.2021. Notice of the said application was issued for 08.09.2021. On 08.09.2021, there was no appearance on behalf of the petitioner. On which, court-notice was issued and the matter was listed for 16.10.2021. On 16.10.2021 also, there was no appearance on behalf of the petitioner. Again NBWs were issued for 08.12.2021. Again before the next date of hearing, the application for cancellation of NBWs was filed by the petitioner, which was taken up on 10.11.2021 and the NBWs were stayed till the next date of hearing. On the date fixed i.e. 08.12.2021, the counsel for the petitioner submitted that the petitioner shall make the payment of Rs.5 lacs by the next date of hearing and shall also finalize the time to make the payment of remaining Rs.87 lacs. Matter was adjourned to 23.12.2021. Relevant portion of the order dated 08.12.2021 is reproduced hereunder :

“08.12.2021

.....

.....

Ld. counsel for the complainant submits that remaining payment of settlement amount of Rs.92,00,000/- has not been paid by the accused till date despite multiple opportunities.

Ld. counsel for the accused submits that as per instructions received from the accused, **accused shall make payment of Rs.5,00,000/- to the complainant by NDOH.** He further submits that accused shall also finalize the time line to make remaining payment of Rs.87,00,000/- by NDOH.

.....”





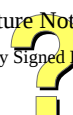
5.8 On 23.12.2021, the petitioner submitted that he was unable to comply with the settlement and requested for proceeding the matter on merits. Accordingly, arguments on the petitioner's pending application u/S. 311 Cr.P.C. were heard and the matter was put up for orders on 13.01.2022 and thereafter, to 03.02.2022. On 03.02.2022, the petitioner's application u/S. 311 Cr.P.C. was dismissed, which is under challenge before this court.

6.0. Above record speaks for itself. It is a stark case of impugntiy with which the petitioner has taken the system for a ride. Complaint under Section 138 NI Act was filed in 2014 and more than 9 years have elapsed since then. The petitioner had been seeking adjournments on one pretext or the other. Time and again, the petitioner got the coercive process/execution of NBWs halted by stating that he was ready to amicably settle the matter. The fact that the same was only a ploy, is evident from the fact that he did not even diligently appear before the mediator. In the second round of mediation, even after arriving at settlement on 13.08.2019, despite repeated opportunities neither did the petitioner honour his own undertaking in the MOU to pay the dues nor did he comply with the undertaking given by him before the court from time to time to make the payment. As noted above, even two cheques issued by the petitioner pursuant to settlement, were dishonoured, thus compelling the respondent herein to file the petition for contempt bearing Cont. Cas(C) 424 of 2020, which is stated to be pending. Subsequently, the petitioner prayed for proceeding with the matter on merits. On 27.03.2021, the petitioner moved an application under Section



311 Cr.P.C seeking an opportunity to cross-examine the respondent/complainant. Even thereafter, the petitioner again requested for 4 months' time to make the payment of first instalment of Rs. 23 lacs as per the settlement between the parties and undertook to pay an amount of Rs. 10 lacs before the next date of hearing i.e. 09.07.2021. It is noteworthy that despite seeking time, the petitioner still did not comply with the undertaking given and rather again did not appear on the subsequent date i.e. 08.09.2021 compelling the court to issue NBWs against him. Yet again on 08.12.2021, the date by which the NBWs were to return, undertaking to make payment of Rs. 5 lacs was made and also to give a plan for payment of the balance amount of Rs. 87 lacs. The petitioner however failed to fulfil his promise and again requested the court to proceed on merits.

7.0. It is well settled that though Section 311 Cr.P.C confers wide power on the Court, the same needs to be exercised only to meet the ends of justice. This power has to be exercised with great care, caution and circumspection and only for strong and valid reasons. Power under this provision shall not be exercised, if the court is of the considered view that the application has been filed as an abuse of process of law. In somewhat similar situation, in '*Gayathri vs. M. Girish, (2016) 14 SCC 142*', where the defendant's application for recalling of the plaintiff's witness for further cross-examination was rejected and the Hon'ble Supreme Court was approached by way of SLP, the Apex Court while dismissing the SLP, in paras 9 and 11 observed as under :-





“9. In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the petitioner-defendant shown towards the proceedings of the court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law.

11. In [Noor Mohammed v. Jethanand \(2013\) 5 SCC 202](#) , [\(2013\) 2 SCC \(Civ\) 754](#) commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say: (SCC p. 215, para 28)

“28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot



be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.”

8.0. One can also not lose sight of the intent of the legislature in providing a criminal sanction for dishonour of the cheque, that is, to ensure the credibility of transactions involving negotiable instruments. As noted above, the petitioner delayed inordinately, conclusion of the proceedings under Section 138 NI Act, thus impacting not only the faith in negotiable instruments, but also in the justice dispensation system. The petitioner even made mockery of process of negotiated settlement through mediation.

9.0. The above facts and circumstances leave no doubt that the application under Section 311 Cr.P.C was nothing but a gross abuse of process of law. Thus, no infirmity is found in the impugned order rejecting the petitioner’s application u/S 311 Cr.P.C and the same does not call for any interference. The petition is accordingly dismissed with the cost of Rs. 25,000/- to be paid to the respondent.

10.0. The petition is disposed of accordingly.

11.0. Pending applications, if any, are closed.

POONAM A. BAMBA, J

AUGUST 02, 2023/csc

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