



\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 31st October, 2023

+ CRL.M.C. 2693/2023 & CRL.M.A. 10146/2023 (Stay)

SANJEEV SRIVASTAVA AND ANOTHER Petitioners

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Rishi Awasthi,
Mr. Piyush Vatra, Mr. Avinash Ankit,
Mr. Manan Takkar & Ms. Aditi
Prakash, Advocates.
Petitioner no. 1 in person.

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through: Mr. HiteshVali, APP for the State
with SI Nitesh Sharma & HC Rakesh,
P.S. Defence Colony.
Respondent no. 2 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks quashing of FIR No. 147/2022 under Section 174A of the Indian Penal Code, 1860 ('IPC') registered at PS Defence Colony.



2. Briefly stated, the facts of the present case, leading up to the registration of the present FIR are as under:

- i. In 2016, Mr. Arvind Gupta, i.e., respondent no. 2 herein, made a complaint under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') against the petitioners, before the Court of the learned Metropolitan Magistrate, South-East, Saket.
- ii. During the pendency of the proceedings, the *inter se* dispute between the parties was referred to the Mediation Centre at Saket Courts. Resultantly, the dispute was amicably settled and a settlement agreement dated 19.07.2018 was entered into between the parties.
- iii. Thereafter, the learned Metropolitan Magistrate, *vide* order dated 06.08.2018, recorded the terms of the settlement. It was also recorded that respondent no. 2 was in receipt of a demand draft for a sum of Rs. 15,00,000/- and 10 PCDs. The learned Metropolitan Magistrate compounded the complaint in accordance with Section 147 of the NI Act, in terms of the settlement arrived at between the parties.
- iv. On 15.12.2018, respondent no. 2 moved an application under Sections 421/431 of the CrPC before the learned Metropolitan Magistrate stating the petitioner no. 1 did not comply with the terms of the settlement agreement. In view thereof, the learned Metropolitan magistrate passed orders for issuance of warrants of attachment under Section 421 of the CrPC in order to realize the settlement amount.
- v. On 02.02.2019, the learned Metropolitan Magistrate directed respondent no. 2 to file the list of immovable and movable properties owned by petitioner no. 1.



- vi. Since the earlier warrant was not executed, on 27.04.2019, the learned metropolitan magistrate issued fresh warrants of attachments. Non-Bailable warrants were also issued against four accused persons, including the petitioners.
- vii. On 08.07.2019, the learned metropolitan Magistrate recorded that non-bailable warrants against three accused, including the petitioners were not executed. Therefore, respondent no. 2 was directed to file the Master data of the accused company reflecting the residential addresses of its directors.
- viii. On 23.07.2019, the required details were placed on record by respondent no. 2. The learned Metropolitan Magistrate directed fresh non-bailable be issued against the petitioners through the concerned SHO, at the address mentioned in the Master Data.
- ix. On 16.10.2019, it was again noted that the non-bailable warrants remained unexecuted and fresh non-bailable warrants were issued, to be executed at the address mentioned in the bail bonds. Additionally, notice to surety was also issued through the concerned SHO.
- x. On 22.11.2019, the learned Metropolitan Magistrate noted that the non-bailable warrants had not been received back. Notice to surety Achla Nand remained unserved and notice to other sureties has not been received back. Considering the said situation, the learned Metropolitan Magistrate issued fresh non-bailable warrants and issued warrants of attachments against the sureties, through concerned SHO.



- xi. On 23.12.2019, since the non-bailable warrants against the petitioners were still unexecuted, the learned Metropolitan Magistrate issued process under Section 82 of the CrPC.
- xii. On 13.03.2020, the learned metropolitan Magistrate noted that process under Section 82 of the CrPC was executed against the petitioners.
- xiii. On 14.09.2020, notice was issued to the process server who had executed the proclamation under Section 82 of the CrPC against the petitioners.
- xiv. On 11.12.2020, the learned metropolitan Magistrate issued summons to the process server for recording his statement.
- xv. Thereafter, since the process server did not appear, fresh summons were issued to him on 09.02.2021 and 18.12.2021.
- xvi. On 21.05.2022, the statement of the process server was recorded. The learned Metropolitan Magistrate noted that process under Section 82 of the CrPC had already been executed against the petitioners and even after passage of thirty days thereafter, they have not appeared. The petitioners were accordingly declared absconders. Accordingly, the concerned SHO was directed to file a status report regarding the apprehension of the petitioners and was also directed to register an FIR against them under relevant provisions.
- xvii. On 29.06.2022, an application was moved on behalf of the petitioners seeking cancellation of proceedings under Section 82 of the CrPC. The learned Metropolitan Magistrate observed that since the petitioners had already been declared absconders and an FIR has been ordered to be registered, the application was not maintainable. Accordingly, the said



application was dismissed. On the said date, a status report was also placed on record stating that the petitioners had not been apprehended and FIR had also not been registered till date. Accordingly, the SHO was directed to comply with order dated 21.05.2022, *forthwith*.

xviii. A revision petition against order dated 29.06.2022 dismissing the application for cancellation of proceedings under Section 82 of the CrPC was dismissed by the learned Additional Sessions Judge.

xix. The present FIR was registered on 29.07.2022 under Section 174A of the IPC against the petitioners.

3. Learned Senior Counsel for the petitioners, at the outset, submitted that the *inter se* dispute between the parties, inasmuch as it relates to the non-compliance of certain terms of the settlement agreement dated 19.07.2018 has since been settled, *vide* a separate settlement agreement dated 21.12.2022. In view thereof, *vide* order dated 07.01.2023, the learned Metropolitan Magistrate compounded the complaint case under Section 138 of the NI Act and acquitted all the accused persons. It was submitted that pursuant thereto, respondent no. 2 has no objection if the present FIR against the petitioners in quashed. Respondent no. 2 has also given an affidavit to that effect, which has been placed on record.

4. Without prejudice to the aforesaid, as far as the merits of the case are concerned, learned Senior Counsel submitted that the learned Metropolitan Magistrate, without issuing a notice/summons to the petitioners for their appearance, mechanically passed the order dated 15.12.2018 for issuance of warrants of attachment. It was further submitted that while issuing summons to the process server who had executed the process under Section 82 of the



CrPC, the learned metropolitan Magistrate categorically noted that there was no report regarding the summons issued to the petitioners on earlier occasions. Learned Senior Counsel for the petitioners further drew the attention of this Court to order dated 21.05.2023, whereby the learned Metropolitan Magistrate had directed the concerned SHO to register an FIR against the petitioners. It was submitted that in the said order, it has been recorded that inadvertently the case was not shown in the cause list for that day but despite that, coercive steps were ordered to be taken against the petitioners.

5. In support of his contentions, learned Senior Counsel for the petitioners placed reliance on the following judgments:

- i. Sharpreet Walia Sabarwal v. State of Punjab and Anr., MANU/SCOR/16760/2018.
- ii. Noor Salim Rana and Ors. v. State (Govt. of NCT of Delhi) and Ors., MANU/DE/0173/2016.
- iii. Sohrab Hussain v. State NCT of Delhi and Anr., Order dated 25.05.2022 passed by a learned Single Judge of this Court.
- iv. Sanjeev Srivastava v. State of NCT of Delhi and Anr. & Anr., 2021:DHC:913.
- v. Rajesh Ebrahimkutty Majidhabeevi v. State (Govt. of NCT of Delhi) and Ors., MANU/DE/2670/2021.
- vi. Davindra Mahajan v. State of Haryana, MANU/PH/0876/2022.
- vii. Vikas Gupta v. State of Haryana and Others, Order dated 01.08.2018 passed by a learned Single Judge of the Hon'ble High Court of Punjab and Haryana in CRM-M-19636-2018.



6. Respondent no. 2 was present in person on a previous date of hearing, i.e., on 18.04.2023 and submitted that he does not dispute the fact that the complaint under Section 138 of the NI Act instituted on his behalf has been compounded and the petitioners have accordingly been acquitted. It was further submitted that he has no objection to quashing of the present FIR.

7. Learned APP for the State submitted that during the course of investigation in the present FIR, efforts were made to apprehend the petitioners at their given address at A-12, Sector 24, NOIDA, Uttar Pradesh but no clue was found and the petitioners have not been apprehended till date. It was submitted that as per report of the State Crime Record Bureau, the petitioners herein have no previous involvements. It was submitted that even in response to execution of the process under Section 82 of the CrPC, the petitioners failed to appear before the concerned Court and hence, notwithstanding the settlement arrived at between the parties, the present FIR should not be quashed. In support of the said contention, learned APP for the State placed reliance on a judgment dated 04.01.2012 passed by a learned Single Judge of this Court in **CRL.MC. 4208/2011** titled '**Maneesh Goomer v. State**'.

8. Heard learned counsel for the parties and perused the record.

9. The offence under Section 138 of the NI Act stood compounded *vide* order dated 06.08.2018, wherein it has been recorded as under:

“Matter has been settled between the parties in mediation center. Mediation settlement is taken on record. Same is Ex. C1. Today the complainant has obtained one DD bearing number 609414 dated 11.07.2018 of Rs.15 lacs and ten PDCs bearing 304315 to 304324 in terms of settlement. Statement of complainant and AR of



accused company is recorded to the effect that they have voluntarily settled the matter in mediation center.

I am satisfied that complainant and accused no.1 to 3 have compound the offence U/S 138 NT Act out of their free will without any force or coercion in the Mediation Centre. There is no illegality in the terms and conditions of settlement as mentioned in Ex.CL Therefore, the offence under section u/s 138 NT Act stands compounded U/s147 NI Act. It is made clear that if accused failed to make the payment as per schedule mentioned in Ex. C1, the amount of settlement shall be recovered as per provisions of Section 431 Cr.P.C. Reliance can be placed upon the judgment in the case of "Dayawati V s Yogesh Kumar Gosain" CrI. Ref. No.1/2016 decided on 17.10.2017 by Hon'ble High Court of Delhi.

Complainant shall be at liberty to file appropriate application u/s 431 Cr.P.c. if accused defaults in making the payment as per the schedule.

File be consigned to record room.

Copy of the order be given dasti to accused no.4.”

10. On an application moved by respondent no. 2 under Section 431 of the CrPC, the following order dated 02.02.2019 was passed by the learned metropolitan Magistrate:

“Perusal of file reveals that matter was settled by Sh. Sanjeev Srivastava only on his behalf. Therefore, issue warrant of attachment against accused Sanjeev Srivastava to realise due settlement amount of Rs. 47 lacs till 31.01.2019 as per settlement Ex..C1, on filing of PF within seven days. Complainant is' directed to file the list of immovable.and movable properties of Sanjeev Srivastava alongwith PF.

Put up On 27.04.2019”

11. At this stage, it is relevant to note, that Sections 421 and 431 of the CrPC provides as under:

“421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—



(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender

431. Money ordered to be paid recoverable as a fine.—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures “under section 357”, the words and figures “or an order for payment of costs under section 359” had been inserted.”

12. As per the judgment delivered by a learned Division Bench of this Court in **Dayawati v. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032**, once the offence under Section 138 of the NI Act is compounded in terms of Section 147 of the said Act, the recovery of the agreed upon amount, has to be



realized in terms of Section 431 read with Section 421 of the CrPC. It is pertinent to note that the only thing which the Court in terms of the aforesaid provisions can do is attach the properties of the accused persons. Powers to issue non-bailable warrants with the learned Metropolitan Magistrate at the stage when the proceedings in the complaint case are over has not been provided for. A bare reading of the said provisions reflects that the mandatory presence of accused persons has not been provided for. The warrant will only be issued for attachment and not for arrest. Proviso to Section 421(3) of the CrPC provides as under:

“Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

13. In view of the aforesaid provisions, the learned Metropolitan Magistrate could not have issued non-bailable warrants on 27.04.2019. It is pertinent to note that pursuant to the non-execution of the non-bailable warrants, process under Section 82 of the CrPC was executed and the petitioners were declared absconders. In **Dayawati (supra)**, it was held as under:

“XIV. Breach of such settlement accepted by the court - consequences?”

118. The instant reference has resulted because of the failure of the court to have recorded the settlement and undertakings binding the accused person in the complaint under Section 138 of the NI Act to abide by the settlement arrived at during mediation. There can be no manner of doubt that once a settlement is reported to the court and made the basis of seeking the court's indulgence, the parties ought not to be able to resile from such a position. So what is the remedy available to a complainant if the respondent commits breach of the mediation settlement and defaults in making the agreed payments?

119. Let us examine as to whether the legislature has provided any mechanism in the Cr.P.C. for recovery of monetary amounts.



120. We have extracted Section 421 of the Cr.P.C. above which provides the mechanism to recover fines, by issuing a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender and/or by issuing a warrant authorizing the realization of amounts as arrears of land revenue from movable and immovable property of the defaulter.

121. In the event of either party resiling from the agreed upon settlement which has received the *imprimatur* of the court, the party attempting to breach the settlement and undertaking cannot be permitted to avoid making the payment. Such party also should not be allowed to violate such undertaking given to the opposite side as well as the court.

122. In (2009) 6 SCC 652, *Vijayan v. Sadanandan K.*, it was held that Section 431 read with Section 421 of the Cr.P.C. is applicable to recovery of compensation ordered under Section 357(5).

123. Section 431 Cr.P.C., also extracted above, provides if any money, other than a fine, is payable by virtue of any order made under the Cr.P.C., the method of recovery whereof is not expressly provided for, shall be recoverable in terms of Section 421 Cr.P.C.

124. In the event that a criminal court passes order accepting the mediated settlement between the parties and directs the accused to make payment in terms thereof, the settlement amount becomes payable under the order of the court. Such order having been passed in proceedings under Section 138 of the NI Act, would be an order under Section 147 of the NI Act and Section 320 of the Cr.P.C.”

14. In view of the scheme of the CrPC and the observations made in **Dayawati (supra)**, this Court is of the considered opinion that once a compromise has been arrived at and an offence under Section 138 of the NI Act is compounded, the concerned Court, after passing an order compounding the offence can only proceed for attachment in terms of Sections 421 and 431 of the CrPC. Thus, the non-bailable warrants issued were without jurisdiction and therefore, the consequent proceedings under Section 82 of the CrPC were also invalid.



15. Be that as it may, it is the case of the petitioners that the offence again stands compounded in terms of the settlement dated 21.12.2022 arrived at between the parties and the accused persons have been acquitted *vide* order dated 07.01.2023 passed by Sh. Rishabh Tanwar, Metropolitan Magistrate-09/SED, Saket Courts. It is further the case of the petitioners that pursuant to the said compounding, respondent no. 2 has no objection to the quashing of the present FIR.

16. As far as the judgment in **Maneesh Goomer** (*supra*) relied upon by learned APP for the State is concerned, it is noted that the facts of the said case are distinct from the present one inasmuch as the offence under Section 138 of the NI Act had not been compounded therein and the trial was pending before the learned metropolitan Magistrate.

17. In view of the aforesaid facts and circumstances, this Court is of the opinion that in the present case, no useful purpose will be served by continuing with the proceedings in the subject FIR and it is an appropriate case for quashing the same in order to secure the ends of justice.

18. In view thereof, FIR No. 147/2022 under Section 174A of the IPC registered at PS Defence Colony is hereby quashed.

19. The petition is allowed and disposed of accordingly.

20. Pending applications, if any, also stand disposed of.

21. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 31, 2023/bsr