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

\+ CRL.M.C. 1837/2022

SHRI SANJEEV KUMAR BHADGAL THROUGH ITS AUTHORIZED REPRESENTATIVE SHRI ROHIT KUMAR BHADGA .....Petitioner

Through: Mr. C.M. Grover and Mr. Kashish Dhawan, Advocates.

versus

SHRI ANIL KUMAR SHARMA .....Respondent

Through: Mr. S.K. Verma and Ms. Pooja Chadha, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**O R D E R**

% **12.09.2024**

1. The instant petition has been filed by the Petitioner challenging an Order dated 28.03.2022 whereby the learned Additional Sessions Judge, Karkardooma Court, Delhi has dismissed the criminal revision petition filed by the Petitioner challenging an Order dated 08.02.2022 whereby the learned Metropolitan Magistrate dismissed an application filed by the Petitioner under Section 431 CrPC read with Section 421 CrPC.

2. The facts of the case as stated by the Petitioner in the complaint are that the Complainant and the accused were known to each other for several years. It is stated that the accused approached the Complainant to seek financial help of 2,50,000 UAE Dhirams which is equivalent to Rs.41,25,000/- at the relevant period of time, for a period of four years.

3. It is stated that the accused had promised the Complainant that the

amount would be repaid with interest of 8% per annum. Since the amount was not being repaid, the Complainant approached the accused for return of Rs.56,39,250/- i.e., the principal amount with 8% rate of interest from the date of borrowing. It is stated that the accused issued seven cheques amounting to Rs.55,00,000/- in the following manner:-

| ***Sr. No.*** | ***Cheque No.*** | ***Dated*** | ***Amount*** | ***Drawn On*** |
|---|---|---|---|---|
| *1.* | *332038* | *04.12.2018* | *25,00,000/-* | *Central Bank of India, Jyoti Nagar, Delhi* |
| *2.* | *000039* | *30.08.2019* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| *3.* | *000040* | *30.09.2019* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| *4.* | *000041* | *30.10.2019* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| *5.* | *000042* | *30.11.2019* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| *6.* | *000043* | *30.12.2019* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| *7.* | *000042* | *30.01.2020* | *5,00,000/-* | *HDFC Bank, Sector-78, Noida, U.P.* |
| | | ***Total*** | *55,00,000/-* | |

4. It is stated that the first of the said cheques bearing No.332038 was presented by the Complainant before his banker but the same was dishonoured with remarks '*funds insufficient*' vide return Memo dated 04.03.2019. It is stated that the Complainant approached the Accused and asked him to issue another cheque. It is stated that the accused issued another cheque bearing No.000042 for an amount of Rs.5,00,000/-. It is stated that the said cheque was issued by the Accused to the Complainant with an assurance that Rs.25 lakhs will be credited in the account of the Complainant on or before 30.03.2019. When the amount of Rs.25 lakhs was not received by the Complainant till 30.03.2019, the issued a legal notice

dated 03.04.2019 to the accused. Since the legal notice was neither replied nor payment was made to the Complainant, a complaint under Section 138 of the Negotiable Instruments Act was filed against the accused.

5. The matter was referred to mediation and a settlement agreement dated 13.08.2019 was entered into between the parties. The settlement agreement reads as under:-

> *"The present matter u/s 138 NI has been received for mediation from the court of Ms Harshita Vatsayan. Ld. M.M.East District. KKD Courts, Delhi. for dishonour of a cheque of Rs.25.00,000/-, which was issued by the respondent.*
>
> *It is stated by the parties that except the above mentioned case, no other litigation is pending between them.*
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> *It is stated by Rohit Omar Bhadgal that he is brother / SPA Holder of the complainant Shri Sanjay Kumar Bhadgal and he has been duly authorized by the complainant to settle the above-said leaner with the respondent on has behalf and the Special Power of Attorney executed in his favour is already on record.*
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> *Process of mediation explained to the parties. Joint and separate sessions held with the parties. The parties have arrived at an amicable settlement on the following terms and conditions:-*
>
> *1. The complainant has amicably settled the present matter with the respondent for a total sum of Rs.40.00,000/- (Rs. Forty Lakhs only) towards full and final settlement of this claim.*
>
> *2. It is stated by Shri Rohit Kumar Bhadgal, SPA / brother of the complainant that out of the above-said settled amount, the complainant has already a sum of Rs.7,50,000/- by way of account transfer from the respondent for which a receipt mimed which is annexed herewith as Annexure A.*
>
> *3. It is further stated by Shri Rohit Kutner Bhadgal.*

*SPA /brother of the complainant that out of the remaining amount of Rs.32,50,000/- respondent has already handed over six PDCs in the name of the complainant to him. for a total sum of Rs.30,00.000/- (i.e. Rs3,00,00/,- each), all drawn on HDFC Bank. Sector,74,Noida. U.P. the details of which are as follows:-*

*i. cheque No. 000039 dated 30.08.019*
*ii. cheque no 000040 dated 30.09.2019*
*iii cheque No. 000041 dated 30.0.2019*
*iv) cheque No 000042 dated 30.11.2019*
*v) cheque No.000043 dated 30.12.2019*
*vii) cheque No410044 dated 30.01.2020*

*4. It is assured the respondent that all the above-said six PDCs shall be honoured on presentation to the bank.*
*5. It is further agreed between the parties that the respondent the remaining balance amount of Rs.2,50,000/- to the complainant by the way of demand draft within one month from the date of clearance of the last PDC No.000044 dated 30.01.2020, drawn on HDFC Bank, Noida Branch, U.P. It is further agreed between the parties that in case of delay & default the respondent shall be liable to pay penalty of Rs.3,50,000/- over and above the settled amount.*
*6. It is further greed between the patties that in case of delay and default in file payment of above-said settled amount, the complainant shall have right to recover the entire settled amount in one go along with penalty as fine in terms of Section 431 read with Section 421 Cr.P.C. and he shall also be liable, for contempt proceedings under Section 2(b) of the Contempt of Courts Act, 1971 violation thereof.*
*7. It is further agreed between the parties that in terms of the present settlement. Shri Rohit Kumar Bhadgal, SPA / brother of the complainant shall give necessary*

*statement for compounding of the present matter before concerned today itself and after receipt of the two installments, he shall also make necessary statement for withdrawal of the above-said matter before the court concerned as per law on the date already fixed i.e. 15.10.2019.*
*8. It is further agreed between the parties that after the parties act upon the terms of the present settlement, both the parties shall not be left with any claim. whatsoever in nature with respect to the above-said matter.*
*9. Both the parties have agreed on each and every term recorded in the settlement agreement, after carefully reading over and fully understanding and appreciating the contents-scope and effect thereof as also the consequences of the breach thereof including payment of the fine / penalty.*
*10. The to a been settled between the parties of their own free volition and consent and without there being any undue pressure, influence, misrepresentation, or by mistake (both of law and. fact), in any form whatsoever and the settlement agreement has correctly recorded the said agreed terms and same have been read over and explained to the parties in vernacular language.*
*11. Both the parties undertake that they will abide by and be bound by the agreed terms/stipulations of the settlement agreement."*

6. It is stated that in pursuance to settlement agreement, a sum of Rs.5,50,000/- has been paid. Since the pending amounts were not being paid, an application under Section 431 CrPC was filed by the Complainant wherein a direction sought to the accused to make good the settlement amount of Rs.32,50,000/-. The said application has been disposed of *vide* Order dated 08.02.2022 wherein the learned MM has observed as under:-

*"Vide this order I shall dispose of the application of the complainant seeking directions r/s 431 r/w 421 CrPC for the balance payment of Rs.32,50,000/- which is yet to be paid by die accused to the complainant in terms of Mediation Settlement dt. 13.08.2019. It is to be noted that the present application was filed by the complainant on 14.10.2019.*

*Ld. Counsel for the accused has elected not to file any reply to the present application. Arguments on behalf of both the parties were heard on 02.02.2022.*

*The present application has been filed by the complainant as the accused has not complied with the time frame set out in their Mediation Settlement dt. 13.08.2019. Perusal of order sheets shows that owing to the successive defaults on part of the accused trial was resumed by the order of Ld. Predecessor dt. 14.02.2020. Ld. Counsel for the complainant has relied ,upon the case titled as* ***Dynamic Movers India Pvt. Ltd & Anr. vs. Alai Poddar 2021 SCC Online Del 3947*** *stating that Hon'ble High Court of Delhi, by not interfering with the orders of Ld. MM u/s 421/431 CrPC in the above stated case, has opined that action can be initiated against the accused in case Me accused resiles from his commitment to make payment under a mediation settlement that has been arrived at by both the parties voluntarily.*

*Ld. Counsel for licensed has prayed for dismissal of the present application as trial already resumed in the present case.*

*The case relied upon by Ld. Counsel for complainant has been thoroughly perused. The factual matrix of the present ease is not similar to due facts of the above stated case. In the above stated case, after entering into a mediation settlement, the accused persons/*

*petitioners had filed an application before the Ld. MM concerned suing that the said settlement agreement was not binding upon the accused as a co-accused had hacked out of making payments. The present case can be distinguished from the above on the ground that no such contention has been raised in the present ease. The accused has never averred before this court that the settlement agreement dt. 13.08.2019 was not binding upon him. The accused has not tried to wriggle out of his liabilities under the said mediation settlement but had merely sought extension of time limit for the purpose of making payments. Also, the present case is not one where the complainant had withdrawn the complaint case u/s 138 NI Act relying upon the undertaking of the accused to make regular payments in accordance with the case of* ***Dayawati v. Yogesh Kumar Gosain 2017 SCC Online Del 11032****.*

*It has been admitted by the complainant that an amount of Rs. 5,50,000/- has already been paid by the accused in terms of the said agreement. It has also been observed by this court vide order dt. 22.02.2021 that the above payment shall be adjusted at the time of sentencing, if any. Also, in case the accused is acquitted of the said offence, the payment already made by the accused to the complainant shall be liable to be paid back to the accused by the complainant.*

*In terms of the above observation, the present application appears to be infructuous and is accordingly dismissed. Put up for CE on 26.03.2022."*

7. The said order was challenged by the Complainant by filing a revision petition. However, the revisional court has upheld the order passed by the learned MM.

8. The short question that arises for consideration is as to whether the

Order dated 08.02.2022, by which the learned Metropolitan Magistrate dismissed an application filed by the Petitioner under Section 431 CrPC read with Section 421 CrPC, which has been affirmed by the Order dated 28.03.2022, passed by the learned Additional Sessions Judge, Karkardooma Court, Delhi, requires interference or not.

9. Both the Courts below have proceeded on the ground that the application filed by the Petitioner under Section 431 Cr.P.C is not maintainable because the settlement between the parties has failed. The Courts below were of the opinion that the failure of the settlement talks cannot results in automatic recovery of money under the settlement under Section 431 Cr.P.C. In fact, material on record reveals that the complainant has proceeded further by examining the witnesses.

10. The Apex Court has gone ahead by stating that once settlement talks fail between the parties during the proceedings of the complaint filed under Section 138 of the NI Act, then further proceedings under Section 138 NI Act cannot be permitted to be proceeded ahead. The Apex Court in Gimpex Private Limited v. Manoj Goel**, (2022) 11 SCC 705,** has held as under:-

> *"**41**. When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons — higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both*

*the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law. "*

11. It is open for the Complainant to take recourse to other remedies both civil and criminal as available under law. This Court, therefore, does not find any reason to interfere with the order impugned herein.

12. The petition is dismissed along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER 12, 2024**

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