



2024:DHC:4860



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01st July, 2024

+ **CRL.M.C. 2760/2019 & CRL.M.A. 11065/2019, CRL.M.A. 40401/2019**

ASHOK KUMAR

..... Petitioner

versus

STATE & ANR.

..... Respondents

+ **CRL.M.C. 2761/2019 & CRL.M.A. 11068/2019, CRL.M.A. 40488/2019**

ASHOK KUMAR

..... Petitioner

versus

STATE OF DELHI NCT & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Adit S. Pujari, Mr. Shaurya Mittal and
Ms. Pallavi Chatterjee, Advs.

For the Respondents : Mr. Utkarsh, APP for the State
Mr. Tanuj Khurana and Mr. Abhishek
Rawat, Advs. for R-2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking setting aside of common order dated 21.02.2019 (hereafter '**impugned order**'), passed by the

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learned Trial Court in Complaint Case Nos. 617263/2016 and 617264/2016 respectively.

Brief Facts

2. The learned Trial Court, by the impugned order, had directed the trial to proceed on merits. The petitioner is essentially aggrieved by the continuation of proceedings under the Negotiable Instruments Act, 1881 ('NI Act'), since, according to the petitioner, the parties had settled their disputes before the Mediation Centre and the petitioner, pursuant to the settlement, had also paid the agreed amount to the Respondent No. 2/ complainant.

3. Respondent No. 2 filed the Complaint Case Nos. 617263/2016 and 617264/2016 on 08.05.2015 against the petitioner and certain other accused persons, under Sections 138/141/142 of NI Act.

4. The Complaint Case No. 617263/2016 was filed with respect to cheque bearing No. 381857 dated 05.02.2015 for an amount of ₹20,00,000/- and cheque bearing No. 335813 dated 05.01.2015 for an amount of ₹30,00,000/-. The cheques got dishonoured 07.03.2015.

5. The Complaint Case No. 617264/2016 was filed with respect to cheque bearing No. 215590 dated 11.03.2015 for an amount of ₹30,00,000/- and cheque bearing No. 915887 dated 11.03.2015 for an amount of ₹45,000/-. The cheques got dishonoured on 11.03.2015.



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6. The complaints were filed by Respondent No. 2 alleging that the company namely M/s Kassa Finvest Pvt. Ltd. (hereafter '**the company**') in which the petitioner holds 5% shares, had represented a rosy picture by portraying that they were in the business of trading in security market and persuaded Respondent No. 2 to invest certain amounts. The transactions were done between the parties and the cheques for a sum of ₹50,00,000/- and ₹30,45,000/- were paid by the company in discharge of the liability. On the dishonour of the cheques, the above referred complaints were filed by Respondent No.2.

7. On 05.03.2016, the matter was referred to Meditation Centre, Saket Courts, on a joint request of the parties, that is, the petitioner and Respondent No. 2. From 05.03.2016 till 27.08.2018, the matters were listed before the learned Trial Court on more than ten occasions, but the matters were kept pending since the settlement proceedings were ongoing between the parties.

8. In the meanwhile, the parties entered into a settlement agreement which included a condition wherein the petitioner was under obligation to "*not do any act which may affect the rights..*" of the Respondent No. 2 in obtaining certain sums from the Investor Protection Fund (IPF) and the due amounts with respect to the settlement agreement were fully paid on 16.05.2016 by the petitioner. Thereafter, the matter was kept pending for certain compliances before the learned Trial Court, which concluded on 17.05.2018.



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9. On 01.04.2016, Respondent No. 2 and certain other parties including M/s Kassa Finvest Pvt. Ltd. signed the settlement agreement and M/s Kassa Finvest Pvt. Ltd. made an advance payment for a sum of ₹ 30,00,000/- to Respondent No. 2 against the entire outstanding of ₹1,00,00,000/-. The said payment was made way of four cheques bearing nos. 201693, 201694, 922810 and 922811 dated 04.04.2016, 04.04.2016, 16.05.2016 and 16.05.2016 respectively for a cumulative sum of ₹20,00,000/- along with ₹10,00,000/- in cash.

10. In terms of the settlement agreement dated 01.04.2016, on the receipt of ₹30,00,000/- by Respondent No. 2, the Respondent No. 2 was to withdraw all the complaints under the NI Act against the petitioner and all related parties /entities.

11. Respondent No. 2 appeared before the Mediator at Delhi Mediation Centre, Saket Court, Delhi on 16.05.2016 in view of the settlement agreement and stated that the matter is amicably settled and does not want to pursue the same any more. He further stated that he has agreed to withdraw both the complaints and make a necessary statement before the learned Trial Court.

12. On 19.07.2016, a joint request was made before the learned Trial Court for placing on record the settlement deed on the next date of hearing and on the said date, the learned Trial Court was apprised about the settlement arrived at between the parties before the Mediation Centre on 16.05.2016. The parties thereafter sought time for filing the settlement deed.

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13. On 30.08.2016, the parties once again took time to file the written settlement agreement and on the said date, the learned Trial Court also dismissed the application filed by the Accused No. 3 / Mr. Manoj Kumar Aggarwal (chief financial officer), seeking discharge.

14. On 22.07.2017, the complainant, in the absence of the petitioner, submitted that the present petitioner is ready to settle the matter and the settlement talks are still going on.

15. Thereafter on 19.04.2018, it was submitted by the learned counsel appearing for the Accused No. 2 / petitioner, that the entire payment to the complainant in compliance of Mediation Settlement dated 16.05.2016 has been made and sought time to place on record the said settlement agreement and the documents evidencing the said payment. But the learned Trial Court still proceeded with framing of notice under Section 251 of the CrPC.

16. On 27.08.2018 again, it was submitted by the proxy counsel for the parties that the settlement talks are still ongoing and the proceedings were deferred to 15.11.2018. On 15.11.2018, the learned counsel for the complainant apprised the learned Trial Court of the receipt of ₹30,00,000/- after the settlement agreement dated 01.4.2016 and also stated that the remaining amount of ₹50,00,000/- has not been paid to the complainant till date, whereas the learned counsel for the petitioner / accused drew the attention of the learned Trial Court towards Clause No. 4, 5 and 6 of the settlement agreement, and submitted that the case should be withdrawn.



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17. Thereafter, the learned Trial Court put the matter for consideration of the settlement agreement on 14.12.2018 and 28.01.2019, when the arguments of both the parties were heard. Thereafter, on 21.02.2019, the learned Trial Court passed the impugned order.

The impugned order

18. The learned Trial Court, by impugned order, had directed the trial to proceed and placed its reliance on the judgment passed by the Hon'ble Apex Court in the case of ***State of Orissa v. Debendra Nath Pandhi : (2005) 1 SCC 568***.

19. The learned Trial Court, in the impugned order, stated that the record indicates that the case is at initial stage of framing of notice under Section 251 of CrPC and in view of the judgment of the Hon'ble Apex Court in the case of ***State of Orissa v. Debendra Nath Pandhi (supra)***, the trial should proceed.

20. The learned Trial Court held that the veracity of the settlement agreement would be seen during the course of trial and directed the trial to proceed.

Submissions

21. The learned Counsel for the petitioner submitted that the learned Trial Court erred in proceeding with the complaint cases, in view of the mediation order dated 16.05.2016, when the Respondent



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No.2 under took to withdraw the complaints. He submitted that the learned Trial Court did not appreciate the fact that the parties have entered into the settlement dated 01.04.2016 and have acted upon the same. In terms of the settlement the petitioner has paid a sum of ₹30,00,000/- to Respondent No.2 and subsequently the statement of Respondent No. 2 was also recorded before the Delhi Mediation Centre, Saket Court, stating that the matter is amicably settled and he wishes to withdraw the complaint cases.

22. He submitted that the learned Trial Court while dealing with the question of the authenticity of the settlement agreement did not appreciate the fact that the Respondent No.2 himself stated the same before the Trial Court and the same was duly recorded in order dated 15.11.2018. The Trial Court did not appreciate the fact that the petitioner also paid a sum of ₹30,00,000/- in terms of the said agreement dated 01.04.2016.

23. He submitted that the Trial Court has not followed the judgement passed by this Court in ***Dayawati v. Yogesh Kumar Gosain*, 2017:DHC:6199-DB**, whereby this Court had held that where the settlement agreement is entered into through formal mediation process by the parties, the parties should be held accountable for honouring the same.

24. He submitted that the learned Trial Court did not appreciate the fact that the Respondent No.2 at no point has disputed the settlement. He submitted that on 16.05.2016, the fact of settlement was duly



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recorded and the proceedings were signed by the parties as well as their respective counsel.

25. The learned Counsel for the Respondent No.2 submitted that the impugned order does not warrant any interference and the learned Trial Court has only ordered to proceed with the trial on its merits and ordered framing of notice, under Section 251 Cr.P.C.

26. He submitted that not only the complainant but also his wife, had invested huge amount of money with the present petitioner. He submitted that in total two complaints were filed by the Respondent No.2 in relation to Cheques totalling Rs.80,45,000/- (Rupees Eighty Lacs Forty-Five Thousand Only) and one complaint was filed by his wife in regard to a cheque of Rs.20,00,000/- (Rupees Twenty Lacs Only). He submitted that on 23.07.2016, as agreed orally and mutually the wife of Respondent No.2, withdrew the Complaint Case bearing No.28167 of 2016 as filed before the Learned Metropolitan Magistrate at the Patiala House Court.

27. He submitted that Respondent No.2 and his wife also filed a Criminal Complaint against the Petitioner, which was registered as FIR No.0048 on 10.04.2015 under Sections 120-B, 403, 409, 417, 418, 420, 421 and 477A of the Indian Penal Code, 1860. In this regard, he submitted that the Petitioner was arrested and was subsequently granted bail by the Hon'ble High Court of Delhi on 16.02.2016.

28. On 16.05.2015, cognizance was taken by the Ld. Metropolitan Magistrate with respect to the complaints filed by the Respondent No.2. Both the complaints were sent to Daily Continuous Lok Adalat

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(DCLA), for settlement between the parties. On 17.02.2016, the matter was returned to the court. On 05.03.2016, the matter was referred to Mediation Centre, Saket on joint request of the parties. On 19.07.2016, the Petitioner and Accused No.3 appeared in court and requested an adjournment to file the settlement deed. During this period various drafts of settlement agreements were exchanged between the parties but none of the draft was finally executed, notarized or was filed before any Court.

29. He submitted that on 15.11.2018, a fabricated settlement agreement was presented and the learned Trial court fixed the matter for 14.12.2018 for consideration. On 14.12.2018, 05.01.2019, 28.01.2019 submissions were heard regarding the alleged settlement agreement. On 21.02.2019, the learned Trial Court decided to proceed on merits and set the matter for framing of notice and filing applications.

Analysis

30. The Mediation Report dated 16.05.2016 categorically indicates that Respondent No. 2 has amicably settled the two matters, that is, the complaints which were filed by Respondent No. 2 under Section 138 of the NI Act. Respondent No. 2 also agreed to withdraw the complaints and to make necessary statement before the learned Trial Court. The proceedings further record that the statement is made on his own free will and without any force, pressure or coercion. The proceedings were duly signed by Respondent No. 2, the petitioner



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representing the company, as well the learned counsel who represented the parties.

31. Prior to the recording of the statement by the learned Mediator, the parties had entered into a settlement agreement dated 01.04.2016. The agreement is duly signed by Respondent No. 2 as well as the other parties. The terms of the settlement mention that the parties have settled their disputes, which includes the two complaints which are the subject matter of the present proceedings under Section 138 of the NI Act. In terms of the said settlement, Respondent No. 2 had agreed that on payment of a sum of ₹30,00,000/- against the entire outstanding amount, the claims towards Respondent No. 2 would be settled. The terms of the payment were also mentioned in the said agreement as under:

“2) That the aforesaid payment has been made in the following manner:

a. Chq No. 201693 dated 04-04-2016 drawn on Vijaya Bank, Vasant Kunj, New Delhi. For Rs 3,00,000.00 (Rs Three Lac Only) in favour of Natasha Oberoi.

b. Chq No. 201694 dated 04-04-2016 drawn on Vijaya Bank, Vasant Kunj, New Delhi. For Rs 7,00,000.00 (Rs Seven Lac Only) in favour of Kabir Oberoi.

c. Chq No. 922810 dated 16-05-2016 drawn on Vijaya Bank, Vasant Kunj, New Delhi. For Rs 3,00,000.00 (Rs Three Lac Only) in favour of Natasha Oberoi.

d. Chq No. 922811 dated 16-05-2016 drawn on Vijaya Bank, Vasant Kunj, New Delhi. For Rs 7,00,000.00 (Rs Seven Lac Only) in favour of Kabir Oberoi.”

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32. It is not disputed that a sum of ₹30,00,000/- has been received by Respondent No. 2. The learned counsel for Respondent No. 2, however, contends that the said agreement was only one of the drafts exchanged between the parties and since the same was not recorded by the Court, is not binding.

33. The argument advanced on behalf of Respondent No. 2 on the face of the proceedings as noted by the learned Mediator, is an afterthought and is not *bona fide*. It is apparent that the amicable settlement was arrived at between the parties and that too before the learned Mediator on being refereed by the learned Trial Court for mediation proceedings.

34. Pursuant to the settlement, admittedly the petitioner has altered his position and has made a payment of ₹30,00,000/-.

35. As noted above, the proceedings before the learned Mediator recording the fact that the parties have settled their disputes and Respondent No. 2 would make necessary statement before the learned Trial Court in that regard, was duly signed not only by the parties but also by the learned Advocates who represented the parties.

36. The contention that the statement was not recorded before the Court is of no consequence and is, therefore, meritless.

37. Once it is an admitted position that an agreement was signed by the parties and the payment in terms of the settlement has already been



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paid by the petitioner, Respondent No. 2 cannot be allowed to wriggle away by taking such arguments.

38. It is not denied by Respondent No. 2 that he was present before the learned Mediator and his statement was recorded of his own free will and without any force, pressure or coercion.

39. The reliance of the learned counsel for Respondent No. 2 on the judgment passed by the Division Bench of this Hon'ble Court in the case of *Dayawati v. Yogesh Kumar Gosain* : 243 (2017) DELHI LAW TIMES 117 (DB), is also without any merits. The judgment was passed on 17.10.2017.

40. The Hon'ble Division Bench, noting that the parties after entering into settlement after being referred to mediation, try to wriggle away from the responsibilities and liabilities, had passed certain directions so that strict compliances of the settlement can be made.

41. It was held that the same has to be placed before the Court, which is to be satisfied that the agreement was lawful and the consent of the parties was voluntary and not obtained through any force, pressure, or undue influence.

42. The argument that the settlement agreement was not placed before the Court and the statement was not made before the Court so as to make the agreement binding between the parties, is nothing but



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mala fide attempt on the part of Respondent No. 2 to wriggle away from the liabilities after having accepted the consideration.

43. If the settlements are discarded and rejected on such grounds, the parties would be wary of entering into any settlement agreement and make payments thereof. It is apparent that Respondent No. 2 after having pocketed the amount received pursuant to the settlement, is trying to reagitate the dispute. Such tendency ought not to be encouraged.

44. When, from the perusal of the record of the Trial Court/ mediation proceedings, it is apparent that the parties had settled their disputes way back in the year 2016 and the complainant has also accepted the amount as agreed between the parties, continuation of the proceedings under the NI Act would be an abuse of the process of the Court.

45. As discussed above, the complainant, after having accepted the money, is trying to re-agitate the entire proceedings and has succeeded in keeping the proceedings pending since the year 2016.

46. It is also not the case of the complainant that he, at any stage, offered to return the amount received from the petitioner.

47. The conduct of the litigants to keep the dispute alive for *mala fide* reasons has the tendency of keeping the docket of the Courts heavy to the detriment of other litigants whose cases have been pending for years together.



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48. The High Court, while exercising power under Section 482 of the CrPC, can definitely look into the record and pass such orders that may be necessary to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. It is apparent that the petitioner, despite having paid the amount has been made to suffer and litigate for the last more than eight years due to dishonest attitude of the complainant.

49. The Hon'ble Apex Court in the case of **Krishna Lal Chawla v. State of U.P. : (2021) 5 SCC 435** held as under :

“26. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.

27. This Court's inherent powers under Article 142 of the Constitution to do “complete justice” empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 154 : (2014) 3 SCC (L&S) 134]). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (Monica Kumar v. State of U.P. [Monica Kumar v. State of U.P., (2008) 8 SCC 781 : (2008) 3 SCC (Cri) 649]). Other decisions have held that inherent powers of High Courts provided in Section 482 CrPC may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or mala fide



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motives. (Sirajul v. State of U.P. [Sirajul v. State of U.P., (2015) 9 SCC 201 : (2015) 3 SCC (Cri) 749] ; State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] .) Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants.”

50. In view of the above, the petitions are allowed. The Criminal Complaints bearing Nos. 617263/2016 and 617264/2016 are quashed. The Respondent No. 2 is directed to pay ₹50,000/- as cost to the petitioner within a period of four weeks from today.

51. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

JULY 01, 2024

HK/KDK/SS