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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1144/2022 & CRL.M.A. 3079/2024**

RISHI KHANNA

.....Petitioner

Through: Mr. S.S. Sastri, Mr. Ankur
Gosain, Mr. Brijesh Tiwari
& Mr. K.R. Subraminium,
Advs.

versus

STATE & ANR.

.....Respondents

Through: Mr. Anurag Ahluwalia, Sr.
Adv. with Mr. Vidh Gupta
& Mr. Trivesh Sharma,
Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
20.01.2025

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1. The present petition is filed seeking to set aside the order dated 17.08.2019 (hereafter '**impugned order dated 17.08.2019**'), passed by the learned Metropolitan Magistrate ('**Trial Court**'), Saket Courts, New Delhi, in Complaint Case Nos. 624309, 624310, 624311, 624312, 624313, 624314, 624315 of 2016, pursuant to which, the application filed by the petitioner/accused to drop the proceedings of warrant of attachment was dismissed, and warrants of attachment in terms of Section 421 of the Code of Criminal Procedure, 1973 ('**CrPC.**') were issued against the petitioner, to be executed through the learned District Magistrate.

2. The petitioner also challenges the order dated 26.02.2022 (hereafter '**impugned order dated 26.02.2022**') passed by the

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learned Trial Court, whereby the property of the petitioner was directed to be attached and the application filed by the him for cancellation of warrant of arrest issued by the office of the learned District Magistrate, was dismissed.

Brief Facts

3. The aforementioned complaint cases came to be filed by Respondent No. 2/ complainant against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 ('**NI Act**') owing to the non-payment of the consideration for the garment accessories worth ₹75,10,240/- supplied by Respondent No. 2 to the petitioner.

4. On 3.11.2015, the matters were referred to Mediation Center, Saket Court Complex, for negotiation on settlement, on a joint request of the parties.

5. On 08.02.2016, the parties entered into a settlement agreement (hereafter '**mediation settlement**') wherein it was agreed that the petitioner will pay a full and final settlement amount of ₹1,10,00,000/- to Sh. Sunil Verma, Proprietor of Respondent No. 2, in connection with all the afore mentioned complaint cases. Thereafter, the matter was kept pending for certain compliances and verification of payments, before the learned Trial Court.

6. On 25.05.2016, Respondent No. 2/ complainant submitted that the petitioner/ accused has failed to make payment as per the mediation settlement and that two cheques of ₹5,00,000/- each issued by the petitioner towards the settlement amount, have been dishonoured. The learned Trial Court granted last opportunity to the petitioner to comply with the mediation settlement.

7. The petitioner did not take any steps in furtherance of the mediation settlement and consequently Non Bailable Warrants



were issued against the petitioner on various occasions, which were returned as unexecuted.

8. On 25.10.2016, the learned Trial Court issued process under Section 82 of the CrPC which was duly executed whereafter the petitioner was declared an absconder on 04.05.2017. The learned Trial Court, on the said date, issued notice to the concerned SHO to initiate proceedings under Section 174 of the Indian Penal Code, 1860 ('IPC'), after registration of FIR against the petitioner.

9. The FIR No. 66/2017 was registered against the petitioner at P.S. Defense Colony and the petitioner was arrested on 09.09.2017. The petitioner was thereafter admitted on bail *vide* order dated 23.09.2017 and the matter was listed for the cross-examination of the complainant before the learned Trial Court on 11.12.2017.

10. On 11.12.2017, the petitioner/ accused made a plea to contest the matter on merits stating that he does not wish to proceed with the mediation settlement dated 08.02.2016. The learned Trial Court held that the same is not permissible in terms of the judgement passed in ***Dayawati v. Yogesh Kumar Gosain: 2017 SCC OnLine Del 11032***, and granted one more opportunity to the petitioner, failing which it was held that the amount would be recovered in terms of the said judgement.

11. Despite the opportunities granted by the learned Trial Court, the petitioner did not comply with the terms of the mediation settlement, and subsequently, warrants of attachment were issued against him, for recovery of ₹1,10,00,000/- in terms of the mediation settlement, on 10.04.2018 and 04.07.2018.

12. The petitioner filed an application for dropping the proceedings of warrant of attachment, stating that as per the



mediation settlement, if the accused fails to make payments in the terms therein, both parties will continue with trial and therefore the warrants of attachment are contrary to the settlement.

13. The learned Trial Court dismissed the aforementioned application of the petitioner *vide* the impugned order dated 17.08.2019, observing that the mediation settlement dated 08.02.2016 clearly states that it has been arrived at by the parties with their own free will and without any force, pressure or coercion and the terms and conditions of the same are binding upon the parties. The learned Trial Court held that the option of trial is at the discretion of the complainant/ Respondent No. 2, who has strongly opposed the said application and after having gone through the process of settlement with the petitioner, who has also accepted his financial liability in the settlement, the complainant cannot be forced to go through trial against his will. The learned Trial Court further issued warrant of attachment under Section 421 of the CrPC which was to be executed by the learned District Magistrate as per rules.

14. The petitioner thereafter, filed an application for cancellation of warrant of arrest issued by the office of the learned District Magistrate, which came to be dismissed by the learned Trial Court *vide* the impugned order dated 26.02.2022.

Submissions of parties

15. The learned counsel for the petitioner submits that the learned Trial Court erred in dismissing the applications for dropping the proceedings of warrant of attachment and cancellation of warrant of arrest, as the same have been passed under the presumption that the petitioner had executed the mediation settlement dated 08.02.2016 on his own will, having understood the terms and implications thereof.



16. He submits that there was no statement of the parties on oath affirming that the terms of the settlement were entered into voluntarily by the parties and that the same have been understood by the petitioner.

17. He places reliance on the judgement passed in ***Rajkumar Kuchhal v. Loyal Logistics (P) Ltd.***: 2019 SCC OnLine Del 9649 and submits that neither any formal settlement of the parties was recorded by the learned Trial Court to adopt the mediation settlement as the final disposition, nor any inquiry was held as to the voluntariness of the settlement.

18. He submits that the mediation settlement dated 08.02.2016 is not in terms with the judgement in ***Dayawati (supra)*** since the statement of the petitioner recorded before the Judge in-charge of mediation cannot be interpreted as a statement recorded by the Court in terms of ***Dayawati (supra)***.

19. He submits that the court of Metropolitan Magistrate is not a forum of recovery of money, and that the court cannot proceed as if it were executing the settlement arrived at outside court, without the proceedings in the complaint case being brought to an end. [Ref: ***Rajkumar Kuchhal v. Loyal Logistics (P) Ltd.***: 2019 SCC OnLine Del 9649]

20. *Per contra*, the learned counsel for Respondent No. 2 submits that the impugned orders do not warrant any interference since the petitioner has failed to abide with the terms of the mediation settlement despite several opportunities being granted to him.

21. He refers to the conduct of the petitioner before the learned Trial Court and submits that the present petition is a mere attempt to delay the proceedings. He submits that once the petitioner agreed to pay the settled amount, he cannot be allowed to renege
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from it.

Analysis

22. This Court has heard the submissions on behalf of the parties and has perused the record.

23. Perusal of the record reveals that the parties were referred to mediation *vide* order dated 23.11.2015, on a joint request made by the learned counsels for the parties stating that they are willing to explore the possibility of settlement.

24. Thereafter admittedly the mediation settlement was executed between the parties on 08.02.2016. A bare perusal of the said mediation settlement reveals that the petitioner was to pay a full and final settlement amount of ₹1,10,00,000/- to Respondent No. 2, in instalments by or before 07.03.2018. It was also agreed that in case of any default on part of the petitioner beyond the 15th day of the English calendar month, the same will invite an additional payment of ₹5,000/- till the end of that month, and that in the event of three consecutive defaults, the first party/ Respondent No. 2 will be entitled to revoke the settlement agreement and proceed against the second party/ petitioner as per law. It was further recorded therein that the settlement has been entered upon by the parties voluntarily, with their own free will, without any force or coercion and that the terms of the settlement have been explained to the parties in vernacular (Hindi). It was also recorded that it has been agreed between the parties that they shall be bound by the terms of the settlement.

25. In furtherance of the mediation settlement, the petitioner handed over two cheques to Respondent No. 2 of ₹5,00,000/- each, towards first instalment, which came to dishonoured on presentation.

26. Thereafter several opportunities were granted to the



petitioner to comply with the terms of the mediation settlement, however the petitioner failed to do so.

27. The orders passed by the learned Trial Court clearly reflect the circumstances under which the matter was referred to Mediation and also the conduct of the petitioner.

28. The arguments advanced on behalf of the petitioner that the mediation settlement is not binding upon the parties are, on the face of the proceedings, an afterthought and is not *bona fide*.

29. As noted above, it was recorded in the mediation settlement that the settlement amount will be paid by the petitioner to Respondent No. 2 in connection with all seven complaint cases mentioned above, and the said mediation settlement was duly signed by the parties. The contention of the petitioner that the learned Trial Court erroneously presumed that the petitioner had executed the mediation settlement dated 08.02.2016 on his own will, having understood the terms and implications thereof, is therefore, meritless.

30. It is not denied by the petitioner that he was present before the learned mediator and it is his signatures on the mediation settlement agreement. Once it is an admitted position that an agreement was signed by the parties and the petitioner even acted in furtherance of the said settlement by handing over the cheques to Respondent No. 2, the petitioner cannot be allowed to wriggle away from the same.

31. The learned Trial Court has rightly held that it is the choice of the complainant as to which course is favourable as the mediation settlement itself mentions that in the event of three defaults, the first party/ Respondent No. 2 will be entitled to revoke the settlement and proceed against the second party as per law.



32. The reliance of the learned counsel for the petitioner on the judgement passed by the Division Bench of this Hon'ble Court in the case of ***Dayawati*** (*supra*), is also without any merits.

33. 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. It was held that the settlement agreements entered during the course of mediation are lawful and the consent of the parties is held to be voluntary and not obtained through any force, pressure or undue influence when the settlement is taken on record by the Court concerned.

34. It is relevant to note that the judgement in ***Dayawati*** (*supra*) was delivered on 17.10.2017. The Hon'ble Division Bench noted that the parties litigating under Section 138 of the NI Act, enter into settlements, and try to wriggle out of the responsibilities and liabilities. The Division Bench also took note of the fact that on many occasions the parties themselves request before the Court that the matter be referred to mediation for the purpose of arriving at an amicable solution and then they do not honour the settlement claiming that the consent was not voluntarily.

35. Considering the difficulty faced, the Hon'ble Division Bench held that the settlement shall be placed before the concerned Court and the Court should record the statements of the parties on oath affirming the settlement on its voluntarily and the undertaking to abide by the terms in the manner followed by the Civil Court and in such circumstances the amount payable in terms of the settlement would become payable under an order of the Criminal Court and can be recovered in terms of the CrPC. The relevant portion of the judgement in ***Dayawati*** (*supra*) regarding
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recovery of the settlement amount is reproduced hereunder:

“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.

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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.

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126. Where proceedings are disposed on settlement terms by the High Court, it would be an order passed in exercise of jurisdiction under Section 482 of the Cr.P.C. Upon breach of such order and non-payment of the agreed amounts, the same may be recoverable in terms of Section 431 read with Section 421 Cr.P.C.”

36. The directions came to be passed by the Hon’ble Division Bench in order to avoid a situation where parties though signing the settlement agreement on their own free will, later appear before the Court claiming that the consent was not voluntary.

37. The order sheets in the Trial Court record indicates that the petitioner in the present case at no stage denied that the settlement was not entered into voluntarily. The order dated 11.12.2017 records the submissions of the accused that he does not want to
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proceed with the settlement, which clearly indicates that the petitioner despite having voluntarily entered into settlement, does not want to honour the same. Such situation was not considered by the Division Bench in the *Dayawati* (*supra*).

38. The argument that the statement of the petitioner was not recorded on oath before the Court and therefore is not binding upon the parties, is nothing but a *mala fide* attempt on part of the petitioner to wriggle away from the liabilities after having acted in furtherance of the same. It is relevant to note that the petitioner has not denied that the settlement was signed voluntarily without any pressure. Such tendency ought not to be encouraged. If the settlements are discarded and rejected for no ground, the parties would be wary of entering into any settlement agreements.

39. This Court in *Naveen Kumar v. Khilya Devi* : 2011 SCC OnLine Del 3687 while considering a plea by one of the parties to a settlement agreement, that she was not aware of the terms of the settlement agreement, held as under:

“7.. In my view, plea of ignorance as taken by the defendant no. 1 is nothing but an afterthought, in order to back out from the settlement arrived at before the learned Mediator. It appears that she wants to wriggle out of the Settlement Agreement which has been entered into by her before the learned Mediator for obvious reasons. Mediator is an independent person. He has categorically mentioned in his proceeding that parties had voluntarily and of their own free will had arrived at an amicable settlement resolving their disputes. It has been specifically mentioned in the settlement agreement that parties have voluntarily and of their own free will arrived at this settlement agreement in the presence of Mediator/Conciliator. There is no reason as to why the Mediator would mention that the parties have voluntarily settled the matter had they not done so. Above all, defendant no. 1 was assisted by her lawyer who has categorily stated that she had explained the terms of settlement to defendant no. 1 in Hindi language.

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13. In my view, if such pleas are sustained the very sanctity and purpose of an amicable settlement through the process of mediation, would stand totally eroded....”

(emphasis supplied)



40. The cheques which are subject matter of the present petition were issued way back in the year 2011. The complaint proceedings thereafter continued for another five years and the parties entered into an amicable settlement in the year 2016. The petitioner has acted in furtherance of the same, yet he has succeeded in keeping the proceedings pending for more than a decade.

41. The order sheets also indicate that the petitioner after entering into a settlement, stopped appearing before the Court, which led to various orders being passed by the learned Trial Court including the issuance of the process under Section 82 of the CrPC. The matter, therefore, did not proceed for another two years. Various orders were passed by the learned Trial Court giving opportunities to the petitioner to pay the settlement amount negating the argument that the petitioner is not required to pay. No such payment was ever made by the petitioner. The present petition was ultimately filed in the year 2022 when the learned Trial Court finally directed that the property of the petitioner be attached and issued a warrant of arrest. The conduct of the petitioner also indicates that he has no respect for the legal process and has succeeded for more than a decade to delay the payment of the money.

42. 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.

43. Considering that the petitioner is not honouring the commitment made by him, the learned Trial Court passed the impugned order exercising the power under Section 421 of the



CrPC for recovery of the amount. The same is in consonance with the judgment passed by the Division Bench in *Dayawati (supra)* which categorically held that the party who has voluntarily entered into a mediation settlement cannot escape the liability making mockery of the judicial process.

44. The High Court, while exercising its 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 voluntarily entered into a settlement with Respondent No. 2 and having acted upon the same, is attempting to escape his liability by delaying the proceedings.

45. In view of the above, this Court find no infirmity in the impugned orders passed by the learned Trial Court in Complaint Case Nos. 624309, 624310, 624311, 624312, 624313, 624314, 624315 of 2016, and thus the present petition is dismissed in the aforesaid terms.

46. Pending application(s), if any, stand disposed of.

AMIT MAHAJAN, J

JANUARY 20, 2025