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Ram Avtar Vs. State and Anr.

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Court : Delhi

Decided On : Dec-19-2014

Judge : V.P.Vaish

Appellant : Ram Avtar

Respondent : State and Anr.

Advocate for Def. : Mr. Vinod Diwakar, Mr. Akash Deep

Advocate for Pet/Ap. : Mr. M.S. Oberoi

Judgement :

$~37 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

19. h December, 2014 + CRL.M.C. 2753/2013 RAM AVTAR Through: ..... Petitioner Mr. M.S. Oberoi, Advocate. versus STATE & ANR. Through: ..... Respondents Mr. Vinod Diwakar, APP for the State. Mr. Akash Deep, Authorised Representative. CORAM: HON'BLE MR. JUSTICE V.P.VAISH VED PRAKASH VAISH, J.

(ORAL) 1. This is a petition filed under Section 482 of Code of Criminal Procedure, 1973 seeking quashing of complaint case bearing CC No.3075/12 titled as Shree Gokulam Chit & Finance Co. Pvt. Ltd. vs. Sh. Ram Avtar as well as the proceedings arising out of the same.

2. Succinctly stating the facts giving rise to present petition are that respondent No.2 herein filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) in respect of dishonour of three cheques bearing Nos.687716, 687717 and 687718 all dated 29.01.2011 for Rs.65,300/- (Rupees sixty five thousand three hundred) each drawn on Bank of Baroda, New Delhi. Despite service of statutory notice, the petitioner failed to make payment of the amounts of cheques. After recording evidence of both the parties, vide judgment dated 10.10.2012 learned Metropolitan Magistrate (NI Act)-02, Dwarka Courts, New Delhi convicted the accused under Section 138 of NI Act and vide order on sentence dated 12.10.2012 the petitioner was sentenced to undergo simple imprisonment of six months and to compensate Rs.2,30,000/(Rupees Two lakhs thirty thousand) to respondent No.2 and in case of default of payment, he was to undergo further imprisonment of one month.

3. Aggrieved by the said judgment and order on sentence, the petitioner filed Criminal Appeal No.120/2012. The said appeal was dismissed by learned Additional Sessions Judge-02, Dwarka Courts, New Delhi. Thereafter, the parties entered into a settlement and a Settlement/ Compromise Deed was executed on 05.07.2013. The copy of the Settlement/ Compromise Deed has been filed as Annexure-D to the petition. On the basis of the said settlement, the petitioner has filed the present petition.

4. Learned counsel for the petitioner submits that the petitioner has settled the matter with respondent No.2/ complainant and a Settlement/ Compromise Deed was executed on 05.07.2013. He further submits that the petitioner has already paid the entire settled amount of Rs.2,20,000/(Rupees Two lakhs twenty thousand) by way of cheque. The respondent No.2/ complainant does not want to pursue the complaint.

5. Mr. Akash Deep, Authorised Representative of respondent No.2/ complainant is present in Court today and confirms that the petitioner has settled the matter with respondent No.2. Statement of Mr. Akash Deep, Authorised Representative of respondent No.2 has been recorded separately in this regard.

6. I have heard learned counsel for the petitioner and Mr. Akash Deep, Authorised Representative of complainant and also perused the material on record.

7. At this juncture, it is relevant to re-produce Section 147 of NI Act, which reads as under:

Section 147 - Offences to be compoundable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

8. The Apex Court in Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC663 laid down following guidelines:

21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed: THE GUIDELINES (i) In the circumstances, it is proposed as follows: (a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. (b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit. (c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition

that the accused pays 15% of the cheque amount by way of costs. (d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

9. Since, the present petition has been filed on the basis of settlement, it is not necessary to delve into the facts of the case. It would be suffice to say that the dispute has arisen out of dishonour of three cheques issued by the petitioner and thereafter the parties went through the litigation and the parties have settled the matter and compounded the offence in terms of Section 147 of NI Act. Respondent No.2/ complainant has not opposed the said plea.

10. In the light of the aforesaid facts and circumstances of the case, this Court deem it appropriate to set aside the judgment dated 10.10.2012 and order on sentence dated 12.10.2012 passed by learned Metropolitan Magistrate (NI Act)-02, Dwarka Courts, New Delhi in complaint case bearing CC No.3075/2012 titled as Shree Gokulam Chit & Finance Co. Pvt. Ltd. vs. Sh. Ram Avtar and order dated 31.05.2013 passed by learned Additional Sessions Judge-02, Dwarka Courts, New Delhi in Criminal Appeal No.120/2012, on the basis of settlement arrived at between the parties, subject to condition that the petitioner shall deposit 15% of the cheque amounts by way of cost in Delhi High Court Legal Services Committee within a period of four weeks.

11. The proof of cost shall be placed on record.

12. The petition stands disposed of. (VED PRAKASH VAISH) JUDGE DECEMBER19 2014 hs

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