

(2012) 04 DEL CK 0172

In the Delhi High Court

Case No : Criminal M.C. 2397 of 2011

Ranjita Mittal and Others

APPELLANT

Vs

State of Delhi and Another

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2012) 3 BC 388

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Vikas Gupta with Mr. Raj Kiran Vats, for the Appellant; Fizani Husain, APP for State and Ms. Gurkamal, Advocate for R2, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—The present petition has been preferred u/s 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing the Criminal Complaint No.3002/2011 and order dated 31.05.2011 passed by the learned MM, whereby the petitioners' prayer for compounding the offence made vide application u/s 147 of Negotiable Instruments Act (NI Act for short), was rejected. In the above mentioned complaint filed by the respondent, it has been averred that in the year 2007, a payment of Rs. 4,50,000/- was made to the petitioners as part payment for purchasing a flat in the project named "Shivkala SRS Glamour", which was to be developed by the company owned by the petitioners, named as M/s Advantage Engineering & Developers (P) Ltd.. The possession of the flat was to be handed over to the respondent by October 2009, but as per the respondent, even the construction did not begin on the site of the project by the year 2009. Consequently the respondent asked the petitioners for the refund of the amount deposited by him and after various meetings, the respondent was handed over a cheque bearing no. 379512 dated 07.02.2010 amounting to Rs.1,00,000/- in partial discharge of their liability. The said cheque was

dishonoured on its presentation with remarks "exceeds arrangement". Further, the said cheque was again presented by the respondent for encashment after assurance from the petitioners, but it was dishonoured again. It has been averred that despite the service of a Demand notice dated 31.03.2010, the petitioners failed to make the payment against the dishonoured cheque as well as the rest of the due amount and hence the respondent was constrained to file a complaint in the Court.

2. The learned counsel for the petitioners has prayed for the quashing of the complaint and consequent proceedings and has assailed the impugned order of the Id. MM, rejecting the application of the petitioners u/s 147 of NI Act for compounding the offence on the ground that as the petitioners had tendered the amount of the cheque, the trial Court erred in disallowing the application of the petitioners for compounding the offence. Reliance has been placed on *Damodar S. Prabhu vs. Syed Baba Lal* 160 (2010) DLT 1 (SC) and *Hitek Industries Industries (Bihar) Ltd. and Others Vs. The State of Delhi and Another*, It has also been submitted that the petitioners though being Directors of the M/s Advantage Engineering & Developers (P) Ltd. are neither incharge of day to day affairs of the Company nor are responsible for any decision of the Company and are hence not liable for prosecution for the dishonor of the cheque in question.

3. Per contra, the learned counsel for the respondent has submitted that the respondent cannot be forced to accept the aforesaid amount or compound the case. It has been averred that the liability of the petitioners is up to the tune of Rs. 4,50,000/- and the criminal cannot escape the liability of fine and compensation by just offering a payment of Rs.1,00,000/-. Moreover, considering the past demeanor of the petitioners, the respondents are not inclined to compound the offence and cannot be coerced to do so in the absence of any settlement agreement. It has been further averred that the petitioners had represented themselves to be the Directors of M/s Advantage Engineering & Developers (P) Ltd. at all times of the negotiations for the purchase of the flat and are further shown as Directors in the annual returns filed by them and are also summoned by the trial Court in their capacity as Directors.

4. I have heard the rival submissions and perused the record.

5. The contention of the learned counsel for the petitioners that they are neither incharge of day to day affairs of the Company nor are responsible for any decision of the Company, cannot be gone into by this Court as they have already been summoned by the learned Trial Court and this contention was not raised by the petitioners at that time.

6. Moving on to the issue of compounding the offence, it must be noted that the provisions of the NI Act are penal in nature and entails imprisonment for a term which may extend to two years, along with payment of compensation and fine which may extend to twice the amount of the cheque, by the guilty person. The legislative intent behind enactment of such a provision was to provide a strong

criminal remedy in order to deter the high incidence of dishonor of cheques. Mere payment of the amount in question by the accused person does not entitle him/her to demand compounding of the offence as a matter of right. Compounding of the offence is permissible when both the parties are agreeable to it.

7. In the case of Damodar S. Prabhu (supra), both the appellant and the respondent had arrived at a settlement and had prayed for the compounding of the offence, which is in stark contradiction with the present case where no such settlement has been arrived at and the respondent has refused the offer of compounding the offence.

8. Further, in the case of Hitek Industries (supra), it has been emphasized that the offence u/s 138 of the Negotiable Instruments Act can be compounded at the discretion of the complainant and he cannot be forced to do so. The relevant para of the judgment is :-

5...The word "compromise" itself signifies an agreement between the two parties to compound the offence. If the parties do not agree to compound the offence, the Court has to proceed with the complaint. It is different thing that the Court on considering the offer of payment of cheque amount plus cost may not award a punishment of imprisonment and may only award penalty plus compensation. But the Court cannot force the respondent to enter into a compromise on deposit of cheque amount or the penalty amount by the accused. The Court can only advise/ask the respondent/complainant to consider the offer of compromise.

9. Clearly, the cases relied upon by the counsel for the petitioner are of no help and are clearly distinguishable on facts as well as the ratio laid down on the issue of compounding the offence.

10. In view of the above discussion and the fact that the offer of compounding the offence made by the petitioners has been rejected by the respondent and consequently no compromise has been arrived at between the parties, the respondent cannot be coerced to compound the offence. The Id. trial Court has rightly rejected the application of the petitioners u/s 147 of the NI Act in the absence of any settlement between the parties. I find no illegality or perversity in the impugned order of the Id. M.M. and the same is upheld and maintained by this Court. The petition being devoid of any merit is hereby dismissed.