

Delhi District Court

Neeru Saxena vs . State & Ors. on 5 October, 2018

Neeru Saxena Vs. State & Ors.

CR No: 183/2018

IN THE COURT OF SH. HARISH DUDANI, SPECIAL JUDGE (PC ACT) CBI-I DWARKA
COURTS; NEW DELHI

In the matter of:

Neeru Saxena
Proprietor of M/s Asian's Buildtech Engineers, Resident
of
705, Supriya Appt. Plot No. 20,
Sector-10, Dwarka,
New Delhi- 110059

..... Revisionist

VERSUS

1. State
2. Shalini Srivastava
Wife of Sh. Prakash Srivastava
R/o B-278, Vasant Appt., 2nd Floor, Vasant Kunj
Enclave
New Delhi- 110088.
3. Prakash Srivastava
Son of Late Sh. Vinay Kumar Srivastava R/o B-278,
Vasant Appt., 2nd Floor, Vasant Kunj Enclave
New Delhi- 110088.

..... Respondents

CR No.	183/2018
Date of Institution	01.05.2018
Reserved for orders on	26.09.2018
Judgment announced on	05.10.2018

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D. O. J. 05.10.2018
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JUDGMENT

1. This is a revision petition under Sections 397/399/401 of Cr.P.C. against the impugned order dated 18.04.2018 passed by Ld. MM(NI ACT)-01, South West, Dwarka Courts, New Delhi whereby Ld. Trial Court has been pleased to allow the application filed by the complainant (respondent NO.2 and 3 herein) for recovery of settlement amount of Rs. 34 lacs.

2. Briefly stated facts relevant for disposal of the revision petition are as under:

3. The revision petition arises out of complaint case under Section 138 NI Act, titled as " Shalini Srivastava & Anr. Vs. Neeru Saxena and A.P. Saxena" filed by the complainant(respondent No. 2 and respondent no. 3 herein).

4. Vide order dated 05.01.2015 accused no. 2 A.P.

Sexena was dropped from the array of parties.

5. In the complaint under Section 138 NI Act, it is stated that the complainant entered into an MOU with the accused(revisionist herein) for sale of portion of constructed residential complex on free hold plot No. E/41, Street No. 11, Rajapuri, Opposite Sector-5, Dwarka, New Delhi and in MOU dated 13.04.2013 the complainant was CR NO:183/2018 Page 2 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 given a 'Buy back Offer' of Rs. 32,90,000/- (Rupees Thirty Two Lacs Ninety Thousand) only. In pursuance of the same, the accused(revisionist herein) issued nine cheques. The complainant presented the said cheques but the same were dishonoured except cheque bearing no. 629993 dated 15.07.2014 for Rs. 2,10,000/-, bearing no. 630089 dated 15.01.2014 for Rs. 2,10,000/- and bearing no. 629995 dated 15.04.2014 for Rs. 2,10,000 which were honoured. The complainant sent intimation to the accused about the dishonour of cheques and the accused assured the complainant to fulfill the terms and conditions of MOU and in order to enforce the MOU, the accused entered into the MOU/Commitment dated 21.05.2013 as per which the accused agreed to execute the sale deed of 40 Sq. Yards of back portion of 2ND and 3 rd floors of Property NO. 82, Street No. 11, Rajapuri, Opp. Sector-5 Main, New Delhi - 110059 on or before 10.07.2014 for a total sale consideration of Rs. 28,00,000/- (Rs. Twenty Eight Lacs). But the accused again failed to fulfill the commitment dated 21.05.2013 and thereafter the accused again entered into another MOU dated 10.07.2014 in furtherance of previous MOUs/ Commitment. It is stated that in the MOU dated 10.07.2014 accused agreed to make the payment of Rs. 29,26,000/- (Rupees twenty nine lacs and twenty six thousand) only and for the said purpose, the accused issued the following cheques in CR NO:183/2018 Page 3 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 favour of complainant drawn on Punjab National Bank, SECTOR-10 Branch, Dwarka, New DELHI-110075.

(i) 910937 dated 30.08.2014 for Rs. 13,30,000/-

(ii) 910938 dated 30.08.2014 for Rs. 13,30,000/-

(iii) 910939 dated 10.09.2014 for Rs. 2,66,000/-. But on presentation, the aforesaid three cheques were dishonored with remarks "Insufficient Funds". It is stated that the complainant issued a legal notice dated 27.09.2014 to the accused but accused failed to make the payment of said cheque amounts. Thereafter the complainant filed the complaint under Section 138 r/w Section 141 NI Act.

6. As per order dated 02.01.2015 , the complaint under Section 138 NI Act was fixed for 05.01.2015 for recording of pre-summoning evidence.

7. On 05.01.2015 the complainant adduced pre summoning evidence by way of affidavit EX.CW1/A and complainant Shalini Srivastava examined herself as CW1. As per order dated 05.01.2015, accused no. 1 (revisionist herein) was ordered to be summoned.

8. As per order dated 26.02.2015 the accused(revisionist herein) appeared before the court and it was requested by the parties that there is likelihood of settlement in the present matter and the case may be sent to the Mediation Cell, Dwarka Courts and Ld. MM was pleased to refer the parties to the Mediation Cell, Dwarka CR NO:183/2018 Page 4 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 Courts, New Delhi for settling the terms of compromise.

9. On 12.05.2015 Ld. Trial Court was pleased to pass the following order:

12.05.2015 At 4:20 PM.

Ld. Presiding Officer has gone for TIP at Rohini Courts.

Bar is abstaining from work today.

Present:-	Complainant in person.
	Accused in person.

Matter has been settled in the mediation cell for a total sum of Rs. 37 Lacs. Mediation settlement order is on record. In terms of mediation settlement, accused has handed over eleven PDC's to the complainant. First to ninth PDCs of Rs. 50,000/- each. Tenth PDC of Rs. 3.5 Lacs and eleventh i.e last PDC of Rs. 29 Lacs.

The first & second PDC's of Rs. 50,000/- each are to be payable on 15/05/2015 & 10/06/2015 respectively. Upon joint request of the parties, Put up for confirmation regarding first & Second payment on 11.06.2015.

(Babru Bhan) 1ST Link MM/South-West Dwarka/New Delhi

10. As per order dated 18.06.2015 a sum of Rs. 50,000/-

was paid in cash by the accused to the complainant and two cheques for a sum of Rs. 10,000/- and Rs. 40,000/-

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CR No: 183/2018 were also handed over to the complainant. Again on 16.07.2015 a sum of Rs. 50,000/- was paid in cash to the complainant by the accused and it was informed that cheque of Rs. 10,000/- issued by the accused to the complainant on previous date has been dishonoured. As per order dated 10.08.2015 a sum of Rs. 50,000/- was paid in cash by accused to the complainant. As per order dated 10.09.2015 a sum of Rs. 10,000/- was paid by the accused.

11. On 18.03.2016, Ld. Trial Court was pleased to pass the following order:

18/03/2016 Present: Complainant no. 2 in person with Ld. Counsel Sh. Sachin Katyal.

Complainant no. 1 is absent.

Accused with Ld. Counsel Sh. Kanwarlal Today no payment has been made by the accused to the complainant in terms of Mediation order dated 12.05.2015 as per which accused was supposed to pay the entire settled amount by 30.01.2016.

Ld. Counsel for complainant submitted that complainant has received only Rs. 3 Lacs till date out of the settled amount of Rs. 37 Lacs. Be that as it may, almost one year has elapsed from Mediation Settlement.

I am not inclined to grant any further opportunity for making payment, therefore, in view of the para 4 of the Mediation agreement the present complaint case shall be continued as per law.

In terms of order dated 10.12.2015 cost of Rs.

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CR No: 183/2018 10,000/- has not been paid by the accused to the complainant. Let the same be paid on the NDOH. Explanation in terms of order dt. 16/03/2015 not filed by Ahlmad/Asst. Ahlmad. Let the same be filed on the NDOH without fail.

At the request of Ld. Counsel for accused to come up framing of notice/further proceedings on 07/04/2016.

(Deepak Kumar-II) MM-01(NI Act) SW/DWK/ND 18/03/2016

12. Thereafter on 07.04.2016 notice under Section 251 Cr.P.C. for offence under Section 138 NI Act was framed against the accused to which accused pleaded not guilty and claimed trial.

13. On 07.06.2017 the accused filed an application seeking direction to the complainant to refund/return the settlement amount of Rs. Three lacs and reply to the said application was filed by the complainant (respondent No. 2 and 3 herein) on 03.01.2018. On 03.01.2018 the complainant (respondent No. 2 & 3) filed an application under Sections 431 and 421 Cr.P.C. read with Section 357 Cr.P.C. for directions to the accused to pay the remaining mediation settlement amount of Rs. 34 lacs and also for initiating the contempt proceedings against the accused.

14. Vide impugned order dated 18.04.2018 Ld. Trial CR No:183/2018 Page 7 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 Court was pleased to pass order for recovery of settlement amount of Rs. 34 lacs from the accused and the application filed by the accused for recovery of Rs. 3 lacs from the complainant was dismissed.

15. Aggrieved by the impugned order dated 18.04.2018, the accused (revisionist herein) has filed the revision petition stating therein that the facts, circumstances and guidelines issued by Hon'ble High Court of Delhi in case titled as "Dayawati Vs. Yogesh Kumar Gosain" do not prima facie constitute for recovery of mediation settlement amount of Rs. 34 Lacs under section 431 read with section 421 Cr.P.C. in the present circumstances of the matter. It is stated in the revision petition that as per mediation settlement dated 12.05.2015, revisionist was to pay Rs. 37 lacs in installments and as per settlement revisionist issued 11 PDCs in favour of the complainants and revisionist could pay only three lacs. It is stated in the revision petition that in para 4 of mediation Settlement dated 18.03.2016 it was stipulated that in case the respondents fail to pay the settled amount as agreed above or in case of dishonour of any of the said eleven PDCs, the settlement shall become null and void and the present complaint case shall continue as per law and therefore mediation settlement has become null and void as cheques which were given as per mediation settlement were dishonoured and CR No:183/2018 Page 8 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 revisionist could not pay in time and accordingly complaint case proceeded on merits ,as per the procedure prescribed by law. It is stated in the revision petition that Ld. Trial Court did not appreciate the fact that mediation settlement has become null and void when cheques got dishonoured as per para 4 of mediation settlement dated 12.05.2015 then only complaint case proceeded on merits, as per the procedure prescribed by law . It is stated that Ld. Trial Court failed to adopt procedure prescribed Under Order XXIII of the CPC. It is stated that Ld. Trial Court failed to record the statement of the parties on oath affirming the terms of settlement. It is stated that Ld. Trial Court failed to pass an order which should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 Cr.P.C.. It is stated that Ld. Trial Court has exercised discretion in arbitrary manner while passing the impugned order . It is stated that Ld. MM has no power to review his own order and the impugned order has been passed by Ld. Trial Court without application of mind and is totally mechanical and the impugned order is not based on material or evidence on record.

16. I have heard Ld. Counsel for the parties and gone through the records.

17. The contention of Ld. Counsel for the revisionist CR No:183/2018 Page 9 of 23 D.O.J.05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 is that as per para 4 of the Mediation Settlement dated 12.05.2015 recorded before the Mediator, Mediation Centre, Dwarka Courts, New Delhi, it was agreed between the parties that in case the respondents fail to pay the settled amount as agreed or in case of dishonour of any of the eleven PDCs, the settlement shall become null and void and the complaint case under Section 138 NI Act shall continue as per law. Ld. Counsel for the revisionist has further contended that the settlement dated 12.05.2015 could not be acted upon and vide order dated 18.03.2016 Ld. Trial Court directed that in view of para 4 of the mediation settlement, the present complaint case shall be continued as per law and the Ld. Trial Court adjourned the case for framing of notice and thereafter trial continued in accordance with the law. Ld. Counsel for the revisionist has contended that vide order dated 18.03.2016 Ld. Trial Court has treated the mediation agreement dated 12.05.2015 as null and void and now there can be no review of the said order by Ld. MM thereby directing for payment of settled amount in terms of mediation agreement dated 12.05.2015.

18. Ld. Counsel for the revisionist has further contended that in Dayawati Vs. Yogesh Kumar Gosain, 2017(4) LRC 171(DEL), the Hon'ble High Court of Delhi has observed that for giving effect to the Mediation Agreement, the statement of parties have to be CR No:183/2018 Page 10 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 recorded and thereafter the matter is to be disposed off in terms of the settlement of the parties. But in the present case no statement of parties was recorded, hence, the mediation agreement dated 12.05.2015 is not liable to be executed.

19. Ld. Counsel for respondent no. 2 and 3 has contended that mediation agreement dated 12.05.2015 was partly acted upon and in terms of the same, a sum of Rs. Three lacs was paid by the revisionist to respondent no. 2 and 3. Ld. Counsel for respondent no. 2 and 3 has contended that in terms of mediation agreement dated 12.05.2015, post dated cheques were issued by revisionist to respondent no. 2 and 3 and the same were dishonoured and on account of dishonour of the said cheques, payment in cash were made by the revisionist to respondent no. 2 and 3 and in the circumstances, it is not open for the revisionist to plead that mediation agreement cannot be given effect to. Ld. Counsel for the respondent no. 2 and 3 has contended that the Ld. Trial Court has correctly placed reliance on judgment of Dayawati Vs. Yogesh Kumar Gosain (Supra) while directing the revisionist to make the payment of settlement amount of Rs. 34 lacs. Ld. Counsel for respondent no. 2 and 3 states that impugned order does not suffer from any infirmity.

20. As per record, vide order dated 26.02.2015 the parties were referred for mediation to Mediation Centre, CR No:183/2018 Page 11 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 Dwarka Courts and on 12.05.2015, a settlement was executed between the parties before the mediator.

21. As per order dated 12.05.2015 in terms of mediation agreement, 11 PDCs were handed over by the accused(revisionist herein) to the complainant(respondent no. 2 and 3 herein) . However it is contended that the mediation agreement could not be completely given effect to and a sum of Rs. 3 lacs was given by the accused (revisionist herein) to the complainant(respondent no. 2 and 3 herein).

22. In the impugned order dated 18.04.2018 while directing for recovery of settlement amount of Rs. 34 lacs by the complainant from the accused(revisionist herein), the Ld. Trial Court has relied upon the decision in Dayawati Vs. Yogesh Kumar Gosain (Supra) .

23. In Dayawati Vs. Yogesh Kumar Gosain (Supra), the Hon'ble High Court while deciding the question whether a case under Section 138 NI Act can be referred for mediation was pleased to observe :-

57. Therefore, even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature, however, the Cr.P.C. does permit and recognize settlement without stipulating or restricting the process by which it may be reached. There is thus no bar to CR NO:183/2018 Page 12 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of CPC) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C. XXXXXXXXXXXX XXXXXXXXXXXX

62. Therefore, the Supreme Court has recognized the permissibility of the High Court's quashing the criminal prosecutions in exercise of their inherent jurisdiction under Section 482 of the Cr.P.C. on a consideration of the subject matter of the cases. The Supreme Court has accepted compromises in non-compoundable offences upon evaluation of the genuineness, fairness, equity and interests of justice in continuing with the criminal proceedings relating to noncompoundable offences, after settlement of the entire dispute especially in offences arising from "commercial, financial, civil, partnership" or such like transactions or relating to matrimonial or family disputes which are private in nature.

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68. So far as the offence/proceedings under Section 138 of the NI Act are concerned, the Legislature has provided Section 147 which specifically stipulates that "every offence punishable under this Act shall be compoundable". It is important to note that Section 147 of the statute contains a non-obstante provision and is applicable notwithstanding anything CR NO:183/2018 Page 13 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 contained in the Code of Criminal Procedure. Therefore, irrespective of and apart from the offences stipulated under Section 320 of the Cr.P.C., Section 147 of the NI Act makes the offence under Section 138 of the NI Act specifically compoundable.

24. In Dayawati Vs. Yogesh Kumar Gosain (Supra), the Hon'ble High Court also answered the question whether the Mediation Conciliation Rules, 2004 can be applied in criminal cases and the process to be followed in reference of the dispute in such criminal cases and the Hon'ble High Court was pleased to observe:

31. The Delhi High Court has on 11TH August, 2005 notified the "Mediation And Conciliation Rules 2004" to guide mediation in Delhi. We extract hereunder the relevant extract, as amended, thereof:

xxxxxx xxxxxxxx Rule 25 : Court to fix a date for Recording settlement and passing decree

(a) On receipt of any settlement, the Court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the Court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.

(b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of CR No:183/2018 Page 14 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 which any decree is passed as stated in Clause (a), the Court shall proceed further to decide remaining issues."proceed further to decide remaining issues." XXXXXXXXXXXX XXXXXXXXXXXX

58. So what is the process to be followed in disputes under criminal law? So far as criminal matters are concerned, Section 477 of the Cr.P.C. enables the High Court to make rules regarding any other matter which is required to be prescribed. The Mediation and Conciliation Rules stand notified by the Delhi High Court in exercise of the rule making power under Part X of the Code of Civil Procedure, Section 89(2)(D) of the C.P.C. as well as "all other powers enabling the High Court" in this behalf. The Rules therefore, clearly provide for mediation not only in civil suits, but also to "proceeding pending in the High Court of Delhi or in any court subordinate to the High Court of Delhi". So far as Delhi is concerned, these rules would apply to mediation in a matter referred by the court concerned with a criminal case as well as proceedings under Section 138 of the NI Act.

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77. The Mediation and Conciliation Rules, 2004 stand notified by the High Court of Delhi which would guide the process to be followed even in references to mediation arising under Section 138 of the N.I. Act.

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105. There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure. Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was voluntary and not obtained because of any force, pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.

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25. The settlement before the Mediator in this case was recorded on 12.05.2015 and the decision in Dayawati Vs. Yogesh Kumar Gosain was pronounced on 17.10.2017. In Dayawati Vs. Yogesh Kumar Gosain, 2017(40 LRC 171(DEL), the Hon'ble High Court of Delhi decided the question that what is the procedure to be followed where the dispute has already been referred to mediation and Hon'ble High Court was pleased to hold as : XV. Reference answered

118. In view of the above, the reference made by the Id. Metropolitan Magistrate by the order dated 13TH January, 2016 (extracted in para 1 above) is answered thus :

XXXXXXXXXXXX XXXXXXXX Question III : In cases where the dispute has already been referred to mediation - What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example, when the payments are spread over a long period of time, as is usually the case in such settlement agreements)?

In the context of reference of the parties, in a case arising under Section 138 of the NI Act, to mediation is concerned, the following procedure is required to CR NO:183/2018 Page 17 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 be followed :

XXXXXXXXXXXX XXXXXXXXXXXX III (viii) If a settlement is reached during the mediation, the settlement agreement which is drawn-up must incorporate :

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(c) undertakings of all parties to abide and be bound by the terms of the settlement must be contained in the agreement to ensure that the parties comply with the terms agreed upon;

(d) a clear stipulation, if agreed upon, of the penalty which would enure to the party if a default of the agreed terms is committed in addition to the consequences of the breach of the terms of the settlement;

xxxxxx xxxxxx Proceedings before the court III (x) The magistrate would adopt a procedure akin to that followed by the civil court under Order XXIII of the C.P.C.

III (xi) The magistrate should record a statement on oath of the parties affirming the terms of the settlement; that it was entered into voluntarily, of the free will of the parties, after fully understanding the contents and implications thereof, affirming the contents of the agreement placed before the court; confirming their signatures thereon. A clear CR No:183/2018 Page 18 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 undertaking to abide by the terms of the settlement should also be recorded as a matter of abundant caution.

III (xii) A statement to the above effect may be obtained on affidavit. However, the magistrate must record a statement of the parties proving the affidavit and the settlement agreement on court record.

III (xiii) The magistrate should independently apply his judicial mind and satisfy himself that the settlement agreement is genuine, equitable, lawful, not opposed to public policy, voluntary and that there is no legal impediment in accepting the same. III (xiv) Pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of the settlement terms entered into by and between them. This order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 of the Cr.P.C.

26. As per decision of Hon'ble High Court in Dayawati Vs. Yogesh Kumar Gosain (Supra) , after receipt of settlement agreement from the Mediation Centre, the Magistrate was to record the statement of parties and on CR No:183/2018 Page 19 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 acceptance of terms of settlement by the parties and ensuring free will and voluntariness in entering the settlement of the parties to the agreement, the Magistrate was to pass order thereby accepting the settlement of parties as well as their undertakings and to hold them bound by the terms of the settlement and thereafter the Magistrate should have clearly stipulated that in the event of default by either party, the amount agreed to be paid in the settlement agreement would be recovered in terms of Section 431 read with Section 421 of the Cr.P.C.

27. In Dayawati Vs. Yogesh Kumar Gosain while adjudicating the question of consequences to be followed in case of settlement agreement is not complied with, Hon'ble High Court was pleased to hold:

Question IV : If the settlement in Mediation is not complied with - is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed :

IV (i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate would pass an order under Section 431 read with Section 421 of the Cr.P.C. to recover the amount agreed to be paid by the accused CR NO:183/2018 Page 20 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 in the same manner as a fine would be recovered. IV (ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under Section 2(B) of the Contempt of Courts Act, 1971 for violation thereof.

28. As per decision in Dayawati Vs. Yogesh Kumar Gosain, the court would proceed to pass orders under Sections 431 read with Section 421 of the Cr.P.C. to recover the amount agreed to be paid by the accused only in case the mediation settlement accepted by the court as above is not complied with.

29. However, in the present case the above stated procedure as laid down in Dayawati Vs. Yogesh Kumar Gosain has not been followed.

30. While passing the impugned order dated 18.04.2018, Ld. Magistrate has not referred to various directions /guidelines as laid down regarding the procedure to be followed on receipt of mediation agreement by the court.

31. In the circumstances, the part of the impugned order dated 18.04.2018 thereby directing for recovery of settlement amount of Rs. 34 lacs by the complainant from the accused(revisionist herein) is set aside.

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32. By the impugned order dated 18.04.2018, the Ld. MM has dismissed the application filed by the accused(revisionist herein) for recovery of sum of Rs. Three lacs which she had paid to the complainant in terms of settlement agreement dated 12.05.2015.

33. As per title of the revision petition, the revisionist has directed the revision petition against the part of the impugned order dated 18.04.2018 whereby the complainant was allowed to recover the settlement amount of Rs. 34 lacs from the accused (revisionist herein).

34. During the course of arguments also, no arguments have been advanced by the revisionist on the question of recovery of Rs. Three lacs paid by the revisionist to respondent no. 2 and 3 in terms of settlement agreement dated 12.05.2015 recorded before Mediator.

35. As per impugned order dated 18.04.2018, Ld. Trial Court has been pleased to dismiss the application of revisionist for recovery of Rs. 3 lacs on the premise that complainants (Respondent no. 2 and respondent no. 3 herein) are entitle to recover entire settlement amount in terms of settlement agreement dated 12.05.2015. Hence, Ld. Trial Court has not given any reasons for disallowing the application of revisionist for recovery of sum of Rs. Three lacs paid by the revisionist to the complainant(respondent no. 2 and respondent no. 3 CR NO:183/2018 Page 22 of 23 D.O.J. 05.10.2018 Neeru Saxena Vs. State & Ors.

CR No: 183/2018 herein) in terms of settlement agreement dated 12.05.2015.

36. The revisionist has not pressed before this court the plea for recovery of Rs. Three lacs from the complainant, However, in view of aforesaid discussions, it would be open for the revisionist to file the appropriate application before the court concerned for recovery of Rs. Three lacs paid by the revisionist to complainant(respondent no. 2 and 3 herein) in terms of mediation settlement agreement dated 12.05.2015 which shall be disposed of by the Ld. Trial Court in accordance with law.

37. The revision petition stands disposed of accordingly.

38. Revision File be consigned to record room.

39. A copy of this judgment be sent to Trial Court for information.

Announced in the open (HARISH DUDANI) Court on 05.10.2018 Special Judge,(PC Act) CBI-I Dwarka Courts, New Delhi.

Digitally signed by
HARISH

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DUDANI

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