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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1110/2011**

% *Judgment delivered on: 13th February, 2012*

INSPIRATION INC &ORS. Petitioners
Through : Mr.Maninder Singh, Sh. Sanjeev
Sharma, and Mr. Ashok Mishra, Adv.
versus

STATE &ANR. Respondent
Through : Ms. Rajdipa Behura, APP for
State/R-1.
Mr. D.D. Singh, Adv. for respondent no. 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner has sought for quashing of the order dated 29.03.2011 whereby the application of the petitioners for compounding the offence has been dismissed by the ld. trial court.
2. It is further prayed for quashing the said Criminal Complaint bearing No.421/1/2010 and all consequent proceedings and orders passed therein.
3. Ld. Counsel for the petitioner asserted that on 12.09.2003, the petitioners placed a purchase order with respondent No.2 for purchase of cloth for manufacturing garments for export purposes. As per the

stipulation of the said purchase order the respondent No.2 was to supply the said cloth within 20 days from the date of purchase order. At that time, the petitioner has also handed over a cheque bearing No. 34072 for an amount of Rs.2 lacs to respondent No.2 by way of security.

4. Due to delay in supply of the garments within the stipulated time, the petitioners customer charged damages of USD 17749.80 from respondents (equivalent to Rs.7,98,741/- as per the exchange rate prevalent at that time). The petitioners had already paid a sum of Rs.4 lacs to respondent No.2 for supply of the cloth material.

5. On 21.05.2002 when the customer of petitioner issued the above mentioned debit note, deducting damages to the tune of USD17749.80 from the amount due to the petitioners, petitioners were constrained to issue a legal notice dated 21.05.2004 to respondent No.2 calling upon him to come to their office and settle the account.

6. Despite the above legal notice respondent No.2 deliberately did not come to the office of petitioners for settling the account. Instead, contrary to the advice, and despite knowing that the cheque would not be honoured, respondent no.2 presented the said cheque bearing No.34072 which was dated 10.06.2004 in his account. The said cheque in question is alleged to have been dishonoured on 18.06.2004.

7. On 19.08.2004, respondent No.2 proceeded to file a Criminal Complaint bearing No.421/1/2010 against the petitioners on account of bouncing of the above mentioned cheque before the trial court and in the month of April, 2005 also filed a civil suit for recovery of sum of

Rs.3,86,503/- along with pendent lite and future interest against the petitioners. The said civil suit was based on the aforementioned transaction in respect of which the cheque in question was issued by the petitioners by way of security.

8. Vide order dated 12.01.2009, the said civil suit was decreed against the petitioner. Thereafter, on 10.03.2010, respondent No.2 filed an execution petition bearing No.21/2009. During the said execution proceedings the petitioners paid a sum of Rs. 6 lacs to respondent No.2 in satisfaction of the decree as per the agreed terms.

9. Ld. Counsel for the petitioner submitted that during the course of execution proceedings, it was agreed between the parties that while the petitioners would make the agreed payments before the executing court in satisfaction of the liability, respondent No.2 would withdraw the Criminal Complaint immediately thereafter. However, to the shock and consternation of the petitioners, respondent No.2 blatantly refused to do the needful, when the criminal complaint was next listed on 07.04.2010 or thereafter and asked them to again pay the amount of the dishonoured cheque.

8. It is further submitted that when the petitioners discharged all their liabilities towards respondent No.2 and they refused to withdraw the Criminal Complaint as per the understanding with the intention of extracting more money from the petitioners. On 25.02.2011, the petitioners moved an application before the trial court for compounding of the offence, the same was dismissed vide order dated 29.03.2011.

9. Ld. Counsel further submitted that admittedly the cheque amount was inclusive in the suit filed by respondent No.2. However, since the matter has been fully settled between the parties, therefore, the criminal proceedings cannot go on against the petitioners.

10. On the other hand ld. counsel for the respondent has submitted that after the suit being decreed filed the Execution Petition, arrest warrants were issued against the petitioners and in the order dated 20.07.2009, the petitioner handed over an amount of Rs.1 lac out of the decretal amount. It is also recorded that the parties shall settle the terms and conditions for payment of the balance amount of Rs.4 lacs on 23.07.2009. Thus, the arrest warrants were stayed till next date of hearing.

11. Learned ADJ in his order dated 23.07.2009 further recorded as under:-

“This decree is for approximately Rs.6,00,000/-. On the last date of hearing, warrant of arrest were stayed till date as the Judgment Debtors had paid a sum of Rs.1,00,000/- to the Decree Holder. He further paid an sum of Rs.1,00,000/- today in Court. The balance amount of Rs.4 lac shall be paid and received as per the following terms as agreed by the party. Let the statement of JD be recorded.”

12. Learned ADJ on the same date also recorded the statement of the petitioner on oath which is reproduced below:-

“I shall pay the balance amount of Rs.4 lac in equal instalments. The first instalment of Rs.50,000/- will be paid on on before 10.08.2009. Each instalment of

Rs.50,000/- will be paid by on or before 10th of every succeeding month. I shall be bound by statement. In case of one single default, the entire amount be recovered from through execution warrants.”

13. Ld. Counsel for the petitioner further submits, the respondent has received the entire amount inclusive of the cheque amount. However, there is no purpose in carrying on the criminal proceedings against the petitioners.

14. Ld. counsel for the petitioner has drawn the attention of this Court to the statement recorded and order passed by learned ADJ on 10.03.2010 wherein the respondent No.2 has stated on oath as under:-

“I have received full and final payment today. I have received Rs.26,000/- as the last instalment towards the decretal amount in execution no.21/09 of suit no.10/05.”

“In view of the statement made by the Decree holder execution petition stands satisfied. Copy of this order be given dasti to both the parties. File be consigned to the records.”

15. Thereafter, the ld. ADJ closed the proceedings vide order dated 10.03.2010.

16. During arguments, ld. Counsel for the petitioner, has just to give quietus to the litigation between the parties, he has offered Rs.1.25 Lacs to respondent no.2, who did not accept the same. However, after

some deliberations has agreed on the amount of Rs.1.5 lacs.

17. Ld. Counsel for the respondent has submitted that since respondent no. 2 has received the entire amount in civil suit and Crl. Case under Section 138 NI Act is pending before Trial Court, it took about 8 years in litigation and this amount would at least be fair to teach him a lesson.

18. Since, petitioner has wilfully paid the amount mentioned above, the complaint pending before the Trial Court may be considered for compounding.

19. Ld. Counsel for the respondent further submits that respondent no.2, is his cousin, apart from attorney, the respondent No.2 has given him all the rights, including to settle the matter.

20. Since the matter has been settled between the parties, complaint case bearing no.421/1/2010 pending before learned Trial Court stands compounded.

21. Since, in this process precious time of the public has been consumed, therefore in the interest of justice, Rs.25,000/- as costs shall be paid by the petitioners in favour of the “Indigent and Lawyers Account” Bar Council of Delhi within 04 weeks from today. Proof of the same shall be placed.

22. I further make it clear that petitioner shall pay an amount of Rs.1.25 Lac to respondent within 02 weeks.

23. CrI.M.C. 1110/2011 stands disposed of on the above terms.
24. In view of above order, Criminal M.A. No. 4078/2011 does not require any further adjudication and stands disposed of.
25. Trial Court Record be remitted forthwith.
26. *Dasti.*

SURESH KAIT, J

FEBRUARY 13, 2012
jg/RS