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

+ **W.P.(CRL) 2622/2016**

ALKA KAUSHAL

..... Petitioner

Through: Mr. Manish Tiwari, Mr. Anshuman
Ashok & Mr. Amit A. Pai,
Advocates.

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr. Avi Singh, ASC and Ms. Megha
Bahl, Advocate for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
07.09.2016

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Crl.M.A. No.13963/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(CRL) 2622/2016 and CRL.M.A. No.13962/2016

3. The petitioner has preferred the present writ petition to assail the order dated 16.11.2010 passed by the learned MM (North-West), Rohini Courts, Delhi in CC No.2086/10/08 as being illegal and void. The petitioner

further seeks a direction that the said order does not form part of agreement or compromise.

4. The respondent No.2 had preferred CC No.2086/10/08 in the Court of the CMM, Delhi being a complaint under Section 138/ 142 of the Negotiable Instruments Act (NI Act), wherein the petitioner herein was arrayed as respondent/ accused No.2. Respondent No.4 in the present petition/ Sushila Badola was arrayed as respondent/ accused No.1 in the said complaint. During the pendency of the said complaint, on 16.11.2010, acting through his special power of attorney, namely, Prakash Chander Jamnami—respondent No.3 in the present petition, the complainant in the said case/ respondent No.2 made a statement that he had amicably arrived at a settlement and compromised the dispute with the accused for a total sum of Rs.1 Crore. He stated that in terms of the said settlement, the accused had handed over four post-dated cheques of Rs.25 Lakhs each dated 15.12.2010, 15.03.2011, 15.06.2011 & 15.09.2011, all drawn on the Nainital Bank Limited, Patparganj, Delhi. The complainant acting through the attorney made a statement that he had instructions to withdraw the complaint. Consequently, the learned MM dismissed the complaint as withdrawn.

5. It appears that, thereafter, with the first two cheques issued by the petitioner and respondent No.4 having been dishonoured, after issuance of statutory notice, the respondent No.2 preferred a complaint under Section 138 of the NI Act before the Court of Judicial Magistrate First Class, Malerkotla being Complaint No.64 of 05.09.2011. In the said complaint, the petitioner herein and respondent No.4 both were arrayed as co-accused and both were convicted. The Criminal Miscellaneous Petition No. M908/2014

preferred before the Punjab & Haryana High Court has also been dismissed on 24.02.2014.

6. The petitioner has now preferred the present writ petition to submit that no compromise had been reached between the petitioner and respondent No.4 on the one hand, and the complainant/ respondent No.2 or his attorney/ respondent No.3 and the petitioner was not even before the Court of the learned MM when the order dated 16.11.2010 was passed in CC No.2086/10/08. It is in this background that the petitioner seeks quashing and setting aside of the order dated 16.11.2010 passed by the learned MM.

7. The submission of Mr. Manish Tiwari, learned counsel for the petitioner is that the said compromise is not binding on the petitioner or respondent No.4. He submits that in respect of the said four cheques claimed to have been delivered to the complainant in the said case/ respondent No.2 herein, stop payment instructions had been issued much prior to the date on which the so-called compromise dated 16.11.2010 was arrived at.

8. In my view, the present petition is wholly misconceived and not maintainable. The order dated 16.11.2010 passed by the learned MM in CC No.2086/10/08 shows that the same does not purport to record the settlement of the parties arrived at in Court. The said order was passed merely on the statement of the complainant in that case made through his special power of attorney informing the Court of a purported out of Court settlement, which the complainant in that case claimed to have arrived at with the accused in that case. The Court merely recorded the particulars of the four cheques that

the complainant in the said case claimed to have received from the accused towards settlement of the claim of the complainant in that case. The complaint was withdrawn and it was, accordingly, dismissed as withdrawn.

9. If the stand of the petitioner and/ or respondent No.4 is that that they have not delivered the said four cheques to the complainant/ respondent No.2 under any settlement out of Court, this defence was available to the petitioner herein and respondent No.4 to be raised in the criminal complaint preferred by the complainant/ respondent No.2 premised on the dishonour of the two of the four cheques allegedly issued by the petitioner and respondent No.4 in favour of the respondent No.2 complainant, namely, before the Court of the Judicial Magistrate First Class, Malerkotla. It is not open to the petitioner to ask this Court to examine the issue whether the said four cheques had been issued in an out of Court settlement, or not.

10. The petition is misconceived and is, accordingly, dismissed.

VIPIN SANGHI, J

SEPTEMBER 07, 2016

B.S. Rohella