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

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Decided on: March 01, 2017

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**CRL.M.C. 790/2012 and CrI. M.A. No. 2765/2012 (Stay)**

S N BANSAL & ANR

..... Petitioners

Represented by: Mr. Dinesh Priani, Advocate  
with petitioner No.2 in person.

versus

NCT OF DELHI & ORS

..... Respondents

Represented by: Mr. Ravi Nayak, APP for the  
State with SI Pawan, EOW.  
Respondent No.2 in person

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. Amended memo of parties is taken on record.
2. By the present petition the two petitioners S.N. Bansal and G.J. Varadarajan seek quashing of FIR No. 1111/1998 under Sections 420/467/468/471 IPC registered at PS Kalkaji, Delhi and the proceedings pursuant thereto on the ground that the parties have settled the matter.
3. A perusal of the record would reveal that the respondent No.2 Rakesh Kapoor filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short the 'NI Act') wherein S.N. Bansal, petitioner No.1 was convicted. The conviction was upheld by this Court and S.N. Bansal thereafter approached the Hon'ble Supreme Court by filing special leave petition being SLP (CrI.) No.5036/2004. The SLP was dismissed by the Hon'ble Supreme Court on 15<sup>th</sup> October, 2004. After the SLP (CrI.) No.5036/2004 was dismissed by the Hon'ble Supreme Court, the parties

entered into a settlement whereafter another special leave petition being SLP (Crl.) No.331/2005 was filed before the Hon'ble Supreme Court. A joint memo of compromise between the respondent No.2/complainant Rakesh Kapoor and S.N. Bansal was entered into duly signed by Rakesh Kapoor and S.N. Bansal which was placed on record before the Hon'ble Supreme Court.

4. Contents of joint memo of compromise filed on 31<sup>st</sup> January, 2005 before the Hon'ble Supreme Court are as under:

*“IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CRL.) NO.331 OF 2005*

*IN THE MATTER OF:*

*Rakesh Kapoor*

*Petitioner/  
Complainant*

*Versus*

*S.N. Bansal & Anr.*

*Respondents/  
Accused*

*JOINT MEMO OF COMPROMISE BETWEEN THE  
COMPLAINANT RAKESH KAPOOR AND THE ACCUSED S.N.  
BANSAL PURSUANT TO THE DIRECTIONS OF THE  
HON'BLE SUPREME COURT BY ORDER DATED 28.1.2005.*

*1. That the complainant Rakesh Kapoor and the accused S.N. Bansal have arrived at a settlement whereby the accused S.N. Bansal has paid certain amount and also a post-dated cheque to the complainant Rakesh Kapoor which was reported to the Hon'ble Supreme Court at the time of hearing of the Special Leave Petition on 28.1.2005. The parties made a joint prayer for permission to compound the offence for which the accused has been convicted under Section 138 read with Section 142 of the Negotiable Instrument Act. The Hon'ble Court directed the parties to file a joint Memo of Compromise supported by the*

*affidavits of both the parties. Hence this Joint Memo of Compromise.*

*2. That the Complainant Rakesh Kapoor has received a certain amount and also a post-dated cheque for ₹7 lakhs from the accused S.N. Bansal towards the full and final settlement of all his claims against S.N. Bansal.*

*3. That no amount is due from S.N. Bansal and the Complainant is willing to compound the offence of which S.N. Bansal has been convicted by the Court of Addl. Sessions Judge by judgment dated 25.10.2002 which was confirmed by this Hon'ble Court by the dismissal of Special Leave Petition (Criminal) No. 5036 of 2004 on 15.10.2004.*

*4. That the accused S.N. Bansal, in addition to the amounts already paid to the Complainant has issued a post –dated cheque bearing the date 1.9.2005 for an amount of ₹7 lakhs in favour of the Complainant towards the said full and final settlement.*

*5. That the accused S.N. Bansal solemnly undertake to this Hon'ble Court that the said post-dated cheque of ₹7 lakhs shall be honoured on its due date.*

*6. That the Complainant has no objection in receiving the balance amount by the said post dated cheque of ₹7 lakhs, in view of the undertaking of the accused to this Hon'ble Court.*

*7. That there are no criminal or civil cases instituted by Rakesh Kapoor pending before any court and if any such case is brought to the notice of Rakesh Kapoor, the same shall be withdrawn by making an appropriate application before the concerned Court.*

*8. That in view of the amicable settlement between Rakesh Kapoor and S.N. Bansal, both parties are making a joint prayer before this Hon'ble Court to permit them to compound the offence of which S.N. Bansal has been convicted by judgment dated 25.10.2002 and confirmed by this Hon'ble Court by the dismissal of Special Leave Petition (Crl.) No.5036 of 2004 on 15.10.2004.*

*9. Both the parties have set down their hand on this document on this the 31<sup>st</sup> day of January, 2005 at New Delhi. Both the parties have also filed their respective affidavits in support of this Memo of Compromise.*

*Sd/- RAKESH KAPOOR*  
*COMPLAINANT*

*SD/- S.N. BANSAL*  
*ACCUSED*

*Filed on: 31.1.2005*  
*New Delhi."*

5. In lieu of the claim of the respondent No. 2, the complaint was lodged for two cheque as according to Rakesh Kapoor one cheque was lost from the office of his counsel. The amount of the two cheques dishonoured was approximately ₹1.50 crores as against which a settlement was arrived for a sum of ₹45 lakhs between the parties which was handed over through different cheques and drafts which Rakesh Kapoor acknowledges having received the same.

6. Rakesh Kapoor, respondent No.2 also filed a complaint to the Commissioner of Police on which FIR No. 1111/1998 under Sections 420/467/468/471 IPC was registered at PS Kalkaji, Delhi investigation whereof was later transferred to the Economic Offences Wing of the Delhi Police. Charge sheet has since been filed in the said FIR and by the present petition the petitioners seek quashing of the same as parties have entered into a settlement. Despite service respondent No.2 was not appearing and thus, the SHO concerned was directed to ensure the presence of respondent No.2 in Court today.

7. Rakesh Kapoor, who is present in Court and is identified by the Investigating Officer, does not deny that a settlement was arrived at between the parties and that he had signed the joint memo of compromise between the parties as noted above before the Hon'ble Supreme Court. He further states that at that time the settlement so arrived at between the respondent No. 2

and the petitioner, was by duress on the respondent No.2. This Court asked Rakesh Kapoor as to under whose duress he entered into the settlement to which he replied that it was neither of the Court nor of the petitioner but because he had taken various loans, the creditors were troubling him and he was in dire need of money for which he sold his various properties as well, thus faced with these circumstances, he was compelled to settle the matter with the petitioners.

8. Thus the respondent No.2 compelled by his circumstances settled the matter and not under duress either from the petitioners or from the Court. On a query put to Mr.Rakesh Kapoor as to whether he was ready to restore the petitioners to status quo ante by refunding the amount received with interest thereon, he states that he is not in a position to restore the amount.

9. The Supreme Court in the decision reported as 2005 (3) SCC 302 Mohd. Shamim & Ors. vs. Nahid Begum (Smt.) & Anr. dealing with quashing of a FIR registered under Sections 406/498A/34 IPC observed that the settlement was arrived at between the parties before and on the intervention of the Additional Sessions Judge and as against total amount of ₹2.75 lakhs payable to the respondent therein ₹2.25 lakhs had been paid and the balance amount of ₹50,000/- was to be paid at the time of quashing of the FIR when the respondent therein filed objections to the application seeking quashing of FIR contending that the affidavit was got signed from her by misrepresentation of facts. The Supreme Court held that the denial of the execution of the deed of settlement was an afterthought and cannot be accepted in view of the fact that the settlement was arrived at the intervention of the judicial officer of the rank of Additional Sessions Judge and ex-facie the settlement appears to be genuine. The Supreme Court

further held that the continuance of the criminal proceedings against the appellant therein would be an abuse of the process of the Court and exercising its plenary jurisdiction under Article 142 of the Constitution of India, it quashed the FIR in question.

10. This Court in the decision reported as 2007 SCC OnLine Del 518:(2007) 142 DLT 141 Jaibir v. State observed that once the parties have settled their disputes and have arrived a settlement, the same should be given effect in entirety and should be treated as a solemn settlement. The relevant extract of the report is as under:

*“9. Reverting to the case at hand, it is clear from the settlement that the parties had agreed to bury all their differences. The complainant was also facing criminal proceedings under Sections 498A/406/34, IPC and also under Section 125, Cr.P.C. He has been the beneficiary of the settlement inasmuch as the proceedings under Section 125, Cr.P.C. are withdrawn by Sarita and proceedings under Sections 498A/406/34, IPC are also quashed in view of the cooperation of Sarita. This being a complete package, the complainant cannot turn around and oppose the petition after he agreed for quashing of these proceedings at the time of mediation proceedings. There is another aspect which needs to be emphasized. The settlement was arrived at during mediation proceedings. The Legislature has amended Section 89 of the Code of Civil Procedure in the year 2002. There is an all round attempt by the Legislature and Judiciary, as well as the Executive, to promote the settlement of disputes through the process of Mediation. Therefore, once disputes between the parties have been settled by the process of mediation, it would be in the public interest as well to attach importance to such a process and treat the settlement as a solemn settlement. Otherwise, the movement of mediation may itself suffer if the parties are given to understand that even after they agree for settlement, one of the parties can still back out.*

11. Similar view was taken by this Court in the decision reported as 2012 SCC OnLine Del 5967 Anshu Soni & Ors v. State & Anr. wherein it was held:

*6. After having settled the matter through the process of mediation, which has even been acted upon partially, parties cannot be permitted to back track from the same as it will negate the aims and objectives of whole process of mediation. Withdrawal of consent by respondent no. 2 on some innocuous ground is impermissible. In Ruchi Aggarwal v. Amit Kumar Agrawal 2005 (1) ALT 42 (SC), civil and criminal litigations were pending between the husband and wife. Matter was compromised before the Family Court pursuant whereof, a decree of divorce by mutual consent was granted. Wife withdrew application filed by her under Section 125 Cr.P.C. in terms of the settlement, however, she avoided to withdraw the complaint under Sections 498-A/328/506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Accordingly, husband filed a petition before the High Court of Uttaranchal for quashing of the said complaint. In the said petition, High Court quashed the charge-sheet and the summoning order for want of territorial jurisdiction and transferred the investigations to the concerned Police Station. Wife preferred an appeal before the Supreme Court wherein criminal proceedings were quashed keeping in mind the settlement arrived at between the parties despite opposition of the wife.*

12. Mr. Rakesh Kapoor who is present in Court, states that he cannot return back the money. Thus the respondent No.2 having taken the benefit of the settlement, the other terms of the settlement, arrived at between the parties, are also required to be complied with. Since one of the terms of the settlement arrived at between the parties i.e. clause 7 notes that there was no criminal or civil cases instituted by Rakesh Kapoor pending before any Court and if any such case is brought to the notice of Rakesh Kapoor, the

same shall be withdrawn by making an appropriate application before the concerned court and that on the same set of allegations for which the above noted FIR was registered and a complaint case under Section 138 NI Act is filed, the charge sheet has been filed, the same is liable to be quashed in view of the settlement arrived at between the parties and the respondent No.2 having taken the benefit of the settlement.

13. Consequently, FIR No. 1111/1998 under Sections 420/467/468/471 IPC registered at PS Kalkaji, Delhi and the proceedings pursuant thereto are hereby quashed.

14. Petition and application are disposed of.

15. Order dasti.

**(MUKTA GUPTA)**  
**JUDGE**

**MARCH 01, 2017**  
**‘vn’**