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

%   Decided on: January 19, 2017

\+   **CRL.M.C. 2011/2016 and Crl. M.A. Nos.8503/2016 (Stay) and 11546/2016 (Exemption from personal appearance)**

GANGOTRI ENTERPRISES LIMITED & ORS. ..... Petitioners

Represented by: Mr. Dayan Krishnan, Sr. Advocate with Mr. Subhiksh Vasudev and Ms. Akashi Lodha, Advocates.

versus

SANJAY BANSAL ..... Respondent

Represented by: Mr. Rajesh Mahindru, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition the petitioners pray for quashing of complaint case No. NI-1080/14 titled “Sanjay Bansal vs. Gangotri Enterprises Ltd. & Ors.” and the order dated 16th January, 2015 issuing summons and the proceedings emanating therefrom.

2. In the complaint the respondent alleged that as per the Memorandum of Understanding dated 7th December, 2007 the respondent No.2 was to supply bitumen/LDO, Bitumen emulsion on various dates as per the demands by the petitioners at different sites. In lieu of the material supplied the petitioners handed over two post-dated cheques bearing Nos. 038531 and 038532 for a sum of ₹25 lakhs each as guarantee against the supplies. It was agreed that the petitioner No.1 would make regular payments and in case of default the cheques could be presented for encashment. Towards the

discharge of an outstanding liability of ₹4.17 crores the petitioner gave directions to the respondents to present the two cheques dated 25th April, 2012 on the assurance that the same would be encashed on presentation. The said cheques were returned unpaid with the remarks "account closed" vide return memo dated 26th April, 2012. The respondent served legal notice dated 17th May, 2012 and since despite the legal notice no amount was paid complaint was filed. The said complaint was filed by the petitioners on 7th July, 2012.

3. On coming to know about the complaint the petitioners approached the respondent and a Memorandum of Agreement dated 7th October, 2013 was entered into between the parties wherein the respondent acknowledged the receipt of a new cheque equivalent to the earlier two security cheques for a sum of ₹50 lakhs. As per the Memorandum of Agreement the application for withdrawal of the complaint case was to be presented before the learned Metropolitan Magistrate, Tis Hazari on the next date of hearing, that is, 17th January, 2014 and a copy thereof was supplied to the petitioners. The said withdrawal application was duly signed by the respondent No.2. Since the learned Presiding Officer was on leave on 17th January, 2014, the matter was adjourned to 6th May, 2014 however, no application for withdrawal of the complaint was filed. On 1st February, 2014 the respondent presented the new cheque No.344158 for a sum of ₹50 lakhs which was duly honored. Even on 6th May, 2014 neither the application for withdrawal of the complaint was filed nor was the Court apprised of the settlement by the respondent. On 1st October, 2014 the learned Metropolitan Magistrate returned the complaint in view of the decision of the Supreme Court reported as (2014) 9 SCC 129 _Dashrath Roop Singh Rathore vs. State of Maharashtra_

& Anr. Despite the fact that the respondent was to withdraw the complaint pursuant to the Memorandum of Agreement dated 7th October, 2013 the respondent re-presented the returned complaint before the learned Metropolitan Magistrate, Shahdara which was numbered as NI/1080/14. On 16th January, 2015, the learned Metropolitan Magistrate took cognizance of the offence and issued summons. Complaint was transferred to different Courts. Finally on 19th February, 2016, bailable warrants were issued against the respondent Nos. 2 to 5 resulting in the filing of the present petition.

4. Learned counsel for the petitioners has drawn attention of this Court to the Memorandum of Agreement dated 7th October, 2013, cheque No. 344158 drawn on Axis Bank Ltd. for a sum of ₹50 lakhs and the Bank statement of the petitioners showing transfer of the amount of ₹50 lakhs to that of the respondent.

5. On appearance before the learned Trial Court for cancellation of the non-bailable warrants issued, learned counsel for the petitioners drew the attention of the Court towards payment of ₹50 lakhs and the Settlement Agreement noting that the complaint would be withdrawn. The learned Trial Court posed a query to the learned counsel for the respondent who denied that his father signed the Settlement Agreement however, admitted his signatures on both the copies of the Settlement Agreement. Despite noting the same, the Court was of the view that since there was no chances of the settlement, the matter was required to be proceeded as per law.

6. Thus the issue before this Court is having accepted the cheque amount of the two cheques which were dishonoured, that is, ₹50 lakhs by a new cheque No.344158 duly credited to the account of the respondent and having

agreed to withdraw the complaint could the respondent pursue the complaint on the pretext that since he had outstanding dues of ₹4.17 crores against the petitioners, the amount of ₹50 lakhs received had been adjusted by him towards other payments and the complaint was required to be proceeded.

7. Contention of learned counsel for the petitioners is that having accepted the Cheque bearing No.344158 dated 30th November, 2013 drawn on Axis Bank Ltd. for a sum of ₹50 lakhs as against the two dishonored cheques, which was duly encashed continuance of the proceedings against the petitioners was an abuse of the process of the Court.

8. In the decision reported as 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 State of Haryana v. Bhajan Lal, the Supreme Court laid down the guidelines for exercise of discretion under Section 482 Cr.P.C. for quashing of a complaint case as under:

> *102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety*

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

9. Respondent Sanjay Bansal who was present along with his counsel on 12th August, 2016 admitted before the learned Trial Court his signatures on the Memorandum of Agreement dated 7th October, 2013. The Memorandum of Agreement dated 7th October, 2013 reads as under:

"MEMORANDUM OF AGREEMENT

This Memorandum of Agreement signed and agreed on this day of 7th October' 2013 between M/s Gangotri Enterprises Limited, B-158, Sector-A, Mahanagar, Lucknow-226006 through its Director Shri Ajeet Pandey (hereinafter referred to as GEL) and M/s Petroleum Oils & Chemicals Ltd, 31/35, Main Rohtak Road Punjabi Bagh (West) New Delhi Through its Proprietor Shri Sanjay Bansal (hereinafter referred to as POCL).

It is understood that POCL has been issued two security cheques no.038531 & 038532 for ₹25,00,000/- each drawn on Axis Bank Ltd, New Delhi. POCL has presented the cheques and the same has returned as the account has been closed. M/s POCL has filed a case no. 4868/1/12 U/s 138 NI Act at Tis Hazari Courts, New Delhi against M/s GEL & its Directors.

It is solemnly resolved between GEL & POCL that M/s GEL has now issued a new cheque no: 344158 drawn on Axis Bank Ltd, New Delhi for ₹50,00,000/- (Rs.Fifty Lac Only) dated 30.11.2013 to M/s POCL against the above mentioned two cheques of AXIS Bank. M/s POCL shall withdraw the above-mentioned case no. 4863/1/12 from the Tis Hazari Courts immediately and return the two cheques to M/s GEL as soon as it is returned from the court. M/s POCL will present the new cheque on the due date for encashment.

Agreed and signed this 7th Day of October' 2013 at Noida.

For M/s Gangotri Enterprises Limited	*For M/s Petroleum Oils & Chemicals Ltd.*
Sd/- AJEET PANDEY Director	*Sd/- SANJAY BANSAL Proprietor*
Witness:	*Witness:*

"<u>MEMORANDUM OF AGREEMENT</u>

This Memorandum of Agreement signed and agreed on this day of 7th October' 2013 between M/s Gangotri Enterprises Limited, B-158, Sector-A, Mahanagar, Lucknow-226006 through its Director Shri Ajeet Pandey (hereinafter referred to as GEL) and M/s Petroleum Oils & Chemicals Ltd, 31/35, Main Rohtak Road Punjabi Bagh (West) New Delhi Through its Proprietor Shri Sanjay Bansal (hereinafter referred to as POCL).

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For M/s Gangotri Enterprises Limited	*For M/s Petroleum Oils & Chemicals Ltd.*
Sd/- AJEET PANDEY Director	*Sd/- SANJAY BANSAL Proprietor*

10. It is thus apparent that as per the Memorandum of Agreement cheque No.344158 for a sum of ₹50 lakhs dated 30th November, 2013 was given to the respondent in discharge of the liability for two security cheque Nos.038531 and 038532 for a sum of ₹25 laksh each which were dishonoured and now having encashed the said cheque of ₹50 lakhs the respondent cannot turn around and say that he has utilized the same in discharge of the other debts of the petitioners and complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') should continue. As noted above, the above noted complaint was for offence punishable under Section 138 NI Act for dishonor of the two cheque Nos.038531 and 038532 and not for any other offence for which the respondent has entered into a settlement agreement. Hence the continuance of the above noted complaint on the plea of the respondent now taken is a

clear abuse of the process of the Court. Consequently, complaint case No. NI-1080/14 titled "Sanjay Bansal vs. Gangotri Enterprises Ltd. & Ors." and the order dated 16th January, 2015 issuing summons and the proceedings emanating therefrom are quashed.

11. Petition and applications are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 19, 2017
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