IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.21731 to 21737 of 2018 &
Crl.M.P.Nos.14632, 14633, 14635 to 14639,
11888 to 11901 of 2018 and
Crl.O.P.No. 25398 of 2018 &
Crl.M.P.Nos.14464 and 14465 of 2018

1. M/s.Kalika Cements Limited,
Non known as Aanchal Cement Ltd.
Rep. by its Authorised Signatory,
Mr.Vijay Srivastava,
23-A, N.S.Road, Suite No.5,
7th floor, Kolkata 700 001

2. Manoj Goel

3. Mukesh Goel ... Petitioners in Crl.O.P.Nos.21731 to 21737 of 2018

Manoj Goel ... Petitioner in Crl.O.P.No.25398 of 2018

Vs.

M/s.Gimpex Limited,
Rep. by its Authorised Signatory,
Mr.S.Uma Shankar,
Company Secretary,
No.282, LinghiChetty Street,
Chennai 600 001 ...Respondent in Crl.O.P.Nos.21731 to 21737 of 2018

M/s.Gimpex Limited Limited,
(Formerly Known as Gimpex Limitetd)
Rep. by its Authorised Signatory,
No.282, LinghiChetty Street,
Chennai 600 001 ...Respondent in Crl.O.P.No.25398 of 2018

COMMON PRAYER in Crl.O.P.Nos.21731 to 21737 of 2018:

Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for the records in C.C.Nos.3326 to 3329 of 2012, 99 to 101 of 2013 pending on the file of the Fast Track Court No.IV, George Town, Chennai, quash the same.

PRAYER in Crl.O.P.No.25398 of 2018:

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.389 of 2017 pending on the file of VII Metropolitan Magistrate Court, Chennai, quash the same.

For Petitioners in all Crl.O.P.'s : Mr.M.Ravi, for M/s.Rugan and Arya

For Respondent in all Crl.O.P.'s : Mr.A.Abdul Hameed for M/s.AAV Partners

COMMON ORDER

The petitions in Crl.O.P.Nos.21731 to 21737 of 2018 have been filed to quash the proceedings in C.C.Nos.3326 to 3329 of 2012, 99 to 101 of 2013, respectively, pending on the file of the Fast Track Court No.IV, George Town, Chennai arising out of the offence punishable under Sections 138 and 141 of Negotiable Instruments Act.

2. The learned counsel for the petitioners submitted that the respondent supplied coal to the petitioners and towards the reimbursement of customs duty, wharfage charges etc. the petitioners are liable to pay a sum of Rs.36,51,61,525/- to the respondent. After deducting the payments made by the petitioners a sum of Rs.13,07,75,009/- was due and payable by them. In partial discharge of said liability, the petitioners issued 18 cheques for a sum of Rs.9 crores. The said cheques were presented for collection and the same were returned dishonoured for the reason that 'insufficient funds'. Therefore, the respondent initiated proceedings under Section 138 of Negotiable Instruments Act by seven complaints as against which the petitioner filed quash petition in Crl.O.P.Nos.21731 to 21737 of 2018. The learned counsel for the petitioners submitted that the petitioners have already filed quash petitions before this Court in Crl.O.P.Nos.5494, 5497 to 5500 of 2017 to quash the very same proceedings initiated by the respondent before this Court and the same were dismissed by common order dated 24.11.2017 by this Court. As against the said order, the petitioners preferred Special Leave Petition before before the Hon'ble Supreme Court of India by an order dated 18.05.2018, the Hon'ble Supreme Court of India observed

that this Court has not been looked into the point that the compromise entered between the petitioners and the respondent under coercion pursuant to which the petitioners had issued 15 fresh cheques in full settlement of all claims of the respondent. Therefore, the petitioners were granted liberty to approach this Court once again to take up this plea.

2.1. Further, the Hon'ble Supreme Court observed that the High Court has to deal with the issue on its own merits and it is for the High Court to take its own view. With the above observations, the Special Leave Petition was disposed of. Thereafter, the petitioners filed these petitions to quash the proceedings. While, pending the quash petitions on 01.02.2013, the respondent filed the false complaint before the Central Crime Branch against the petitioners and the same was registered in Crime No.21 of 2013 for the offences under Sections 409, 506 (i) I.P.C. on the allegation that the respondent had paid customs duty and wharfage charges to the extent of Rs.6,96,74,666/-to the Port Authorities and despite the promise to repay the sum the petitioners refused to pay the same and also threatened the respondent with dire consequences. Pursuant to the said complaint, the third petitioner was arrested and remanded to judicial custody. Thereafter, he filed a petition for bail and while it was pending, the third petitioner was granted police custody for four days for enquiry. During the police custody, he was intimidated and threatened with dire consequences and as such he has no other option than to succumb to such threat and finally yielded to the police pressure and agreed to pay a sum of Rs.10 crores on condition to withdraw all the cases and suits pending against the petitioners. A deed of compromise entered between the petitioners and the respondent dated 12.03.2013. Accordingly the parties agreed for a sum of Rs.10 crores as full and final settlement in which a demand draft for a sum of Rs.3 crores and 15 post dated cheques totalling to Rs.7 crores were issued by the third petitioner. Thereafter he was released on bail.

2.2. He further submitted that as such the entire proceedings are vitiated by fraud and by the fabricated three High Seas Sale(HSS) Agreements. There are liability in part of discharging the same, the alleged cheques were issued by the petitioners to the respondent. Therefore, the complaint itself based on the three HSS Agreements and as such it is unsustainable and liable to be quashed. Further he submitted that the respondent obtained deed of compromise under coercion and received a demand draft and 15 fresh cheques in full settlement of all claims as such the execution in respect of the complaints ceased to survive and it cannot be maintained. Further submitted that even as per the deed of compromise the cheques which are the subject matter of the complaint were partly paid by the demand draft and partly substituted by the 15 cheques. In fact, the respondent encashed the demand draft for a sum of Rs.3 crores and thereafter presented all the 15 cheques and issued statutory notice under Section 138 of Negotiable Instruments Act and also filed complaints. When the alleged debt in respect of which the cheques were issued stood discharged by execution of deed of compromise as such the complaints cannot be proceeded further. For which the learned counsel for the petitioner relied upon the Judgment of the High Court of Delhi in the case of Venkatesh Dutt Vs. Shoes East Limited reported in (2004) 72 DRJ 521.

2.3. He submitted that as per the deed of compromise a sum of Rs.10 crores as full and final quit is recorded only a sum of Rs.3 crores by way of demand draft and balance sum of Rs.7 crores within three months in three equal instalments are recorded. Further in the said deed of compromise issuance of cheques was also admitted and in clause 7, if any condition not honoured it would amount to cheat, fraud, breach of trust, etc and in that event, the respondent would be entitled to cancel the bail and also to file a fresh criminal complaint against the drawers of the afore mentioned cheques. But there is no clause that in the event of not honouring the cheques the deed of compromise will be ceased to be in force and complainant can proceed on the original cause of action. On the contrary clause 7 clearly envisages filing of a fresh criminal complaint in the event of dishonour of any cheque. Further as per the Doctrine of 'Accord and satisfaction' attracted the case on hand and also cited judgment held in the case of Union of India Vs. Kishorilal Gupta reported in AIR 1959 SC 1362 as such upon execution of compromise the original cause of action for which the cheques in the 7 complaints were issued stood fully discharged and those complaints cannot be continued thereafter. Therefore, he prayed for quashing of the complaint.

3. Per contra, the learned counsel for the respondent submitted that during business transaction between the petitioners and the respondent in respect of supplying the goods, they entered into three HSS agreements with the petitioners. The respondent paid lumpsum towards customs duty and wharfage charges for enabling the petitioners to clear the goods in which the balance outstanding of Rs.13,07,75,009/- by the petitioners and to repay towards the said balance amount they issued 18 cheques for a value of Rs.9 crores. All the cheques were presented for collection and returned dishonoured for the reason that 'payment stopped by the drawer'. Therefore, the respondent issued statutory notice and initiated proceedings under the Negotiable Instruments Act.

3.1. Thereafter the first accused filed a false and frivolous suit in T.S.No.1615 of 2012 for declaration and permanent injunction on the file of the learned Judge, VII Bench, Calcutta praying for decree of declaration that the respondents claim of Rs.15 crores is illegal and void not binding on the plaintiff. Further prayed for permanent injunction restraining the respondent from misusing the aforesaid 18 cheques in which no interim order was granted and the said suit is still pending. Thereafter, the petitioners stopped payment on the said cheques and in the meanwhile the third petitioner herein was arrested on the complaint of the respondent. On his arrest, the petitioners offered to settle the amount due to respondent and sought for compromise and it was agreed for a sum of Rs.10 crores as full and final settlement in four instalments. The first instalment a sum of Rs.3 crores to be payable by demand draft and no objection for granting bail to the third petitioner herein. Thereafter the second instalment a sum of Rs.2,33,33,333. After receipt of the same injunction application to be withdrawn by the respondent. The third and fourth instalments of Rs.4,66,66,667/- the respondent has to withdraw all legal cases pending before the High Court and the 138 complaint pending before the Metropolitan Magistrate, Chennai. The payment of the first instalment by way of demand draft a sum of Rs.3 crores, the respondent has no objection to release the petitioner on bail, on such settlement the learned Metropolitan Magistrate, George Town, Chennai granted bail to the third petitioner herein. Other accused were also granted anticipatory bail by this Court in view of the settlement.

3.2. Thereafter, the petitioners filed suit before this Court in C.S.No.234 of 2013 for declaration declaring that the deed of compromise dated 12.03.2013 null and void, ab initio and not binding them and also claiming a sum of Rs.1 crore as damage. They also prayed for temporary injunction restraining the respondent from encashing the cheques issued by the petitioners. This Court dismissed the application in O.A.No.252 of 2013 and the Original Side Appeals in O.S.A.Nos.283 and 284 of 2014 were also dismissed by this Court. He further submitted that the earlier quash petitions filed by the petitioners were dismissed by this Court as against which they preferred Special Leave Petition before the Hon'ble Supreme Court of India and directed to file fresh quash petitions on the particular ground. In fact, none of the ground raised in those quash petitions and they raised new ground before the Hon'ble Supreme Court of India in which the above direction issued. It is nothing but afterthought and as such it is liable to be dismissed. No deed of compromise entered between the parties while third petitioner was in police custody. In fact, while he was under judicial custody, a deed of compromise was executed. After execution of deed of compromise he was released on bail and others were granted anticipatory bail and till then they never alleged that the deed of compromise obtained on intimidation and threat before the police. The said plea was rejected by this Court while dismissing the injunction application in O.A.No.252 of 2013.

3.3. He further submitted on one hand the petitioners want to rely upon the deed of compromise and negated all the claims under three HSS Agreements and on the other hand they want to claim that the deed of compromise is null and void. He further submitted that the same plea raised by the petitioners before this Court in O.P.Nos.131 to 133 of 2013 and the same were negatived by this Court. It is neither disclosed in the present petition nor the said orders are placed before this Court. In fact, this Court by an order dated 02.12.2014 in O.A.No.252 of 2013 in C.S.No.234 of 2013, did not accept the plea that the deed of compromise was obtained by force and coercion, threat, intimidation etc. Further he submitted that in the earlier set of matters, the cheques were issued by the first accused and second and third petitioners are the Directors whereas after deed of compromise one of the Director namely Mr.Manoj Goel issued cheques in the individual capacity and as such there are two different sets of cheques were given by the petitioners / accused. Therefore, the liability insofar as the first set of cheques are concerned stands on the different footing than that of the liability insofar as the second sets of cheques are concerned. Therefore, both were given by different entity / persons and in different capacity and as such both the sets of complaints are maintained and sustainable. Therefore, the present proceedings are only to drag the proceedings for the past seven years and prayed for dismissal of these quash petitions.

4. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

5. There are two sets of cheques issued by the petitioners. The first set of cheques were issued before deed of compromise and another sets of cheques were issued after deed of compromise. The criminal original petitions are regarding the first set of cheques on the allegations that the respondent supplied coal to the petitioners and towards the reimbursement of customs duty, wharfage charges etc. the petitioners are liable to pay a sum of Rs.36,51,61,525/- to the respondent. After deducting the payments made by the petitioners a sum of Rs.13,07,75,009/- was due and payable by them. In partial discharge of said liability, the petitioners issued 18 cheques for a sum of Rs.9 crores. The said cheques were presented for collection and the same were returned dishonoured for the reason

that 'insufficient funds'. Therefore, the respondent initiated proceedings under Section 138 of Negotiable Instruments Act by seven complaints. The petitioners are A1 to A3. The first accused is the company represented by its Managing Director, the second accused herein. The petitioners filed quash petitions in Crl.O.P.'s 5494 to 5500 of 2017 for the offences culminated in C.C.Nos.3326 to 3329 of 2012, 99 to 101 of 2013 and this Court dismissed the same by order dated 24.11.2017 as against which the petitioners preferred a petition before the Hon'ble Supreme Court of India in SLP No.17687 of 2018. The Hon'ble Supreme Court of India by order dated 18.05.2018 disposed of the same with liberty to the petitioners to approach this Court again.

6. Therefore, the petitioners filed these petitions to quash the proceedings on the ground that the respondent having chosen to enforce the cheques issued under the deed of compromise, the impugned complaints arising out of the cheques issued earlier under the alleged HSS Agreements cannot continue because there cannot not be two parallel proceedings arising out of the same transaction, since the deed of compromise was signed under the coercion before the police officials and pursuant to which the petitioners issued 15 fresh cheques in full settlement of all claims of the respondent.

7. Now the only point for consideration is that 1) whether simultaneous prosecution of cheques issued prior to the deed of compromise and the cheques issued subsequent to the deed of compromise can be sustainable? 2) If not, which of the proceedings sustained, whether cheques issued prior to the deed of compromise or cheques issued after the deed of compromise when the petitioners have taken plea that the deed of compromise obtained on coercion? ***Admittedly, as per the deed of compromise the petitioner on the liability, issued**" and the same were returned dishonoured and the same were culminated in the complaints. When those proceedings were pending, the petitioners entered into a deed of compromise with the respondent dated 12.03.2013 on the following terms and conditions.

> "1.Based on the above agreement the "PARTY OF THE FIRST PART" hand over DD No:271351, dt:11/03/2013, for Rs.3,00,00,000/- (Rupees Three Crore only) drawn on the Karur Vysya Bank Limited, in favour of the "PARTY OF THE SECOND PART", to the PARTY OF THE SECOND PART" on 11/03/2013
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> 2. On receipt of Rs.3 crore mentioned above, the "PARTY OF THE SECOND PART" shall say no objection for the bail application filed by the 'PARTY OF THE FIRST PART".

3. The "PARTY OF THE FIRST PART" agrees and undertake to pay the balance amount of Rs.7 crore within 3 months in 3 equal instalments of Rs.2,33,33,333/- (Rupees Two Crore Thirty Three Lakh Thirty Three Thousand Three Hundred and Thirty Three Only) every month to the "PARTY OF THE SECOND PART". The monthly instalment shall be paid on or before 11th day of every month ie.11/04/2013, 11/05/2013 and 11/06/2013.

4.The "PARTY OF THE FIRST PART" agrees and undertake to pay the monthly instalment of Rs.2,33,33,333/- equally divided in three parts and Sri.Sitram Goel, Sri.Manoj goel and M/s.Aanchal collection Limited would issue cheques in favour of the "PARTY OF THE SECOND PART" towards the compliance of the settlement.

5. The "PARTY OF THE FIRST PART" handed over following cheques to the "PARTY OF THE SECOND PART" as compliance of the assurance and undertaking given by the "PARTY OF THE FIRST PART"

S. No	Cheque No.	Cheque Date	Amount	Drawn on	Issued by
1	160 626	11/04/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel
2	160 627	11/04/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel
3	160 628	11/05/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel

S. No	Cheque No.	Cheque Date	Amount	Drawn on	Issued by
4	160 629	11/05/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel
5	160 630	11/06/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel
6	160 631	11/06/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Shakesper Sarani, Kolkata - 700 017	Sri Sitaram Goel
7	000 065	11/04/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel
8	000 066	11/04/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel

S. No	Cheque No.	Cheque Date	Amount	Drawn on	Issued by
9	000 067	11/05/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel
10	000 068	11/05/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel
11	000 069	11/06/2013	Rs.35,00,000/- (Rupees Thirty Five Lakhs only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel
12	000 070	11/06/2013	Rs.42,77,777.77 (Rupees Forty Two Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	Mr.Manoj Goel
13	000 176	11/04/2013	Rs.77,77,777.77 (Rupees Seventy Seven Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	M/s.Aanchal Collection Limited

S. No	Cheque No.	Cheque Date	Amount	Drawn on	Issued by
14	000 177	11/05/2013	Rs.77,77,777.77 (Rupees Seventy Seven Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	M/s.Aanchal Collection Limited
15	000 178	11/06/2013	Rs.77,77,777.77 (Rupees Seventy Seven Lakh Seventy Seven Thousand Seven Hundred Seventy Seven and Seventy Seven Paise only)	Karur Vysya Bank, Burrabazaar, Kolkata - 700 007	M/s.Aanchal Collection Limited

6. The "PARTY OF THE FIRST PART" after consultation with the directors of M/s.Aanchal Cement Limited "Formerly M/s Kalika Cement Private Limited) and M/s. Aanchal Collection Limited, which is also family business and sister concern of "PARTY OF THE FIRST PART" and Sri.Sitaram Goel, has arrived at this settlement and signing this compromise deed. Any default or non commitment of the conditions set out in this compromise deed would amount to cheating and fraud. The "PARTY OF THE FIRST PART" has issued the cheque of M/s.Aanchal Collection Limited, towards clearance of legal debt to the "Party of the Second Part".

7. The "PARTY OF THE FIRST PART" agrees and undertakes that if any of the conditions agreed in this compromise deed is not honoured that would amount to cheating, fraud, breach of trust, etc. and the bail granted to Sri.Mukesh Goel shall be deemed to have cancelled automatically and the "PARTY OF THE SECOND PART" is also entitled to cancel the bail and also entitle to file a fresh criminal complaint besides NI Act, against the drawer of cheques and also against other directors of the "PARTY OF THE FIRST PART" and M/s.Aanchal Collection Limited.

8. The "PARTY OF THE SECOND PART", on receipt of Rs.5,33,33,333/- which would be completed after honouring all the cheques dt: 11/04/2013, shall

withdraw the Garnishee application filed in Arbitration proceedings filed against the "PARTY OF THE FIRST PART" in A.No.312/2013 and A.No.313/2013 in O.A.No.42/2013, pending before the Hon'ble High Court of Madras.

9. After payment of the entire settlement amount of Rs.10 crore by the "PARTY OF THE FIRST PART" to the "PARTY OF THE SECOND PART", the "PARTY OF THE SECOND PART" shall withdraw all the criminal complaints, suits, arbtritation proceedings, 138 proceedings filed in C.C.No.3326-3329/2012 & C.C.No.99-101/2013, pending before VIIth, MM, George Town, Chennai against the "PARTY OF THE FIRST PART". It is also assured and agreed by the "PARTY OF THE FIRST PART" shall withdraw the case filed, before the Kolkata City Civil Court against the "PARTY OF THE SECOND PART" in O.S.No.1615/2012.

10. It is agreed that on payment of Rs.10 crore by the "PARTY OF THE FIRST PART" either party shall have no claim against each other on the issue of purchase of Clinker purchased under the HSS agreements dt:17/04/2013, 27/04/2013 and 27/04/2013 and all the cases filed against each other shall be withdrawn."

8. On terms, on the deed of compromise, the petitioners handed over the demand draft for a sum of Rs.3 crores in favour of the respondent and the same was encashed by the respondent. The petitioners have issued 15 cheques for the balance amount of Rs.7 crores in favour of the respondent. As per the above terms, the total outstanding of Rs.13,07,75,009/- was reduced to Rs.10 crores as full and final settlement. On the terms of compromise, the second petitioner who was already arrested pursuant to the crime registered by the police and he was released on bail by the learned Metropolitan Magistrate, George Town, Chennai and other Directors were also granted anticipatory bail. While being so, the third petitioner herein filed a suit in C.S.No.234 of 2013 for declaration declaring the deed of compromise dated 12.03.2013 as illegal and null and void and also claiming damages to the tune of Rs.1 crore. In the said suit, the third petitioner also filed application in O.A.No.252 of 2013 for temporary injunction restraining the respondent from encashing any cheques issued out of the deed of compromise. The said application was dismissed by this Court by order dated 02.12.2014 as against which the third petitioner filed original side appeals in O.S.A.Nos.283 and 284 of 2014 and the same were also dismissed as withdrawn by order dated 12.12.2014.

9. As per the deed of compromise the third accused issued cheques on his personal capacity to the respondent and the same were presented for collection. The same were also returned

dishonoured and culminated in complaint in C.C.No.389 of 2017 as against which the third petitioner filed quash petition before this Court in Crl.O.P.No.17255 of 2017 and the same was dismissed by this Court by an order dated 24.11.2017. As against which the third petitioner preferred Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.17257 of 2018, wherein order was passed as follows:

> "It is argued by Mr.K.V.Viswanathan, learned Senior Counsel appearing for the petitioners, that the petitioners have sought quashing of the proceedings on altogether different grounds. He has referred to Ground 'D' of the petitioner(Pg.67 of the paper book) wherein it is stated that under coercion deed of compromise was signed between the petitioners and the respondent and pursuant to which the petitioners had issued 15 fresh cheques in full settlement of all claims of the respondent. This aspect, he submits has not been looked into by the High Court while passing the common Order. The petitioners are granted liberty to approach the High Court again to take up this plea and we except the High Court to deal with the issue on its own merits.
>
> We make it clear that this Court has not expressed any opinion on the merits of the issue and it is for the High Court to take its own view.
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> With the aforesaid observations the special leave petition is disposed of."

10. When the petitioners have taken stand that the 2 separate prosecutions cannot be maintained for return of two sets of cheques for the discharge of same liability and the deed of compromise entered by the petitioners under threat and coercion, validity of memorandum of compromise is the subject matter of the suit in C.S.No.234 of 2013 on the file of this Court. Therefore, without touching the legality of the said deed of compromise dated 12.03.2013, the liability under the HSS Agreements entered between the petitioners and the respondent are valid and the liability of the petitioners are not becoming null and void. Even as per the terms of deed of compromise the petitioners have agreed their liability and towards the balance sale consideration on the purchase of Clinkers under three HSS Agreements and a sum of Rs.10 crores as full and final settlement and specifically mentioned that after entire settlement of Rs.10 crores, the respondent shall withdraw all the criminal complaints, suits, arbitration proceedings, 138 proceedings filed in C.C.Nos.3326 to 3329 of 2012 and C.C.Nos.99 to 101 of 2013 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai. Even according to the petitioners, they disputed deed of compromise and as such the proceedings initiated by the respondent under Section 138 of Negotiable Instruments Act shall not be vitiated in terms of of

the deed of compromise.

11. Further even before execution of deed of compromise on the issuance of cheques by the petitioners, the respondent have initiated proceedings under the Negotiable Instruments Act. Therefore, those complaints can very well be maintained against the petitioners. The Judgment relied upon by the petitioners in the case of Venkatesh Dutt Vs. Shoes East Limited reported in (2004) 72 DRJ 521, is extracted as follows:

> "8. The very fact that a party enters into a compromise during the pendency of a complaint filed under Section 138 of the Act shows the cause of action pertaining to the initial cheque ceases to be available to the complainant as fresh cause of action becomes available in respect of the cheques issued pursuant to the agreement between the parties in case those cheques are dishonored.
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> 10. Even otherwise it is difficult to accept that two parallel proceedings, one emanating from the original cheque and others emanating from the terms of the agreement between the parties, can be allowed to run simultaneously. If the earlier complaint is also allowed to continue along with the subsequent complaints then the very purpose of agreement between the parties and issuance of fresh cheques become meaningless as fresh cheques issued by a party are towards the original liability that gave rise to the initial complaint filed under Section 138 of the Act.
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> 11. Proceedings u/s 138 of the Act are penal proceedings and are independent of civil remedy of suit for recovery and therefore cannot be allowed to be converted into a civil suit. Since the offence under Section 138 of the Negotiable Instruments Act is of compoundable nature parties may decide to compound the offence u/s 138 of the Act by way of agreement. Once the complainant agrees to accept the cheques towards the liability of the accused during the pendency of the complaint, it amounts to compounding the offence resulting in acquittal as he has with open eyes entered into the agreement and accepted the cheques. Any stipulation like clause 8 in the agreement has no legal value being against the very provision of Section 138 of the Act which makes the drawer liable for penal proceedings in respect of every such cheque which is dishonored but does not encompass the original cheque in lieu of which several cheques are issued and accepted. Every such cheque, if dishonored, shall make the drawer liable

for penal proceedings as envisaged u/s 138 of the N.I. Act.”

12. The said judgment was followed in the case of World Tex Limited and Others Vs. K.C.Fibers Limited in Crl.M.C.No.2814 of 2007 by the High Court of Delhi. However, the Hon'ble Supreme Court of India in the case of Lalit Kumar Sharma and Another Vs. State of Uttar Pradesh and Another reported in (2008) 5 SCC 638, has held as follows:

> “17. Thus, the second cheque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the directors. There was only one transanction between Shri Ashish Narula, Shri Manish Arora, Directors of the Company and the complainant. They have already been punished. Thus, the question of entertaining the second complaint did not arise. It was, in our opinion, wholly misconceived. The appeal, therefore, in our opinion, must be allowed. It is directed accordingly. Respondent shall bear the costs of the appellants. Counsel's fee assessed at Rs. 25,000/-. “

13. In the above case, for the purpose of arriving settlement, the impugned cheques were issued and as such the Hon'ble Supreme Court of India held that the cheques were not issued for discharge of debt or liability of the company. Whereas in the case on hand, the petitioners issued first set of cheques towards their liability and the second set of cheques were issued as per the deed of compromise. In the case of Venkatesh Dutt Vs. Shoes East Limited, it is held that two parallel proceedings one emanating from the original cheque and others emanating from the terms of agreement between the parties can be allowed to run simultaneously is not permissible. If it is allowed to continue the very purpose of the agreement and issuance of fresh cheque become meaningless. Therefore, the earlier complaints are set aside.

14. Whereas in the case on hand, pending the complaints under the Negotiable Instruments Act, the petitioners and the respondent entered into deed of compromise. As per the deed of compromise they issued second set of cheques that too after bail granted to the third petitioner and others were granted anticipatory bail. The petitioners herein filed suit in C.S.No.234 of 2013 challenging the very same deed of compromise as null and void. Therefore, the petitioners on one hand are seeking quashment of the proceedings on the strength of the deed of compromise and on the other hand they challenge very same

deed of compromise as null and void. It shows that the intention of the petitioners are very clear only to escape from the liability they entered into deed of compromise and after achieving some benefit on payment of part consideration as per the deed of compromise they dispute the deed of compromise as if it was obtained on threat and coercion.

15. Therefore, the above judgments cited by the petitioners are not at all applicable to the present case. Even in the above judgments, the Hon'ble Supreme Court of India as well as the High Court of Delhi held that as against one set of cheques the proceedings under Negotiable Instruments Act is maintainable. Accordingly, the complaints arising out of the cheques issued by the petitioners before executing the deed of compromise are very much sustainable against the petitioners.

***16.In view of the above discussions, these Criminal Original Petitions in Crl.O.P.Nos.21731 to 21737 of 2018 are liable to be dismissed. It is made clear that any of the observation made by this Court will not influence the trial Court during the trial and the trial Court is directed to consider the case on merits and in accordance with the law and pass appropriate orders. However, the time is granted by this Court to complete the trial in C.C.Nos.3326 to 3329 of 2012 and 99 to 101 of 2013 extended for a period of two months from today. Accordingly, these criminal original petitions are disposed of. Consequently connected miscellaneous petitions are closed"**

17. The petition in Crl.O.P.No. 25398 of 2018 has been filed to quash the proceedings in C.C.No.389 of 2017 pending on the file of the learned VII Metropolitan Magistrate Court, Chennai arising out of the cheques which were issued after deed of compromise dated 12.03.2013. It is relevant to extract clause No.9 of the deed of compromise as follows:

> "9. After payment of the entire settlement amount of Rs.10 crore by the "PARTY OF THE FIRST PART" to the "PARTY OF THE SECOND PART", the "PARTY OF THE SECOND PART" shall withdraw all the criminal complaints, suits, arbtritation proceedings, 138 proceedings filed in C.C.No.3326-3329/2012 & C.C.No.99-101/2013, pending before VIIth, MM, George Town, Chennai against the "PARTY OF THE FIRST PART". It is also assured and agreed by the "PARTY OF THE FIRST PART" shall withdraw the case filed, before the Kolkata City Civil Court against the "PARTY OF THE SECOND PART" in O.S.No.1615/2012."

18. Accordingly, after payment of entire settlement amount

of Rs.10 crores the proceedings initiated under Section 138 of Negotiable Instruments Act shall have to be withdrawn by the respondent. As pointed out in the above orders passed in Crl.O.P.Nos.21731 to 21737 of 2018, the petitioners on one hand, challenged the earlier proceedings initiated under Negotiable Instruments Act on the first set of cheques issued before the deed of compromise are not maintained since they entered into deed of compromise. Therefore, the complaints are not sustainable. On the other hand, the very deed of compromise itself is not valid one as it was obtained in coercion and threat and as such on the strength of deed of compromise only the cheques were issued and therefore, those complaints initiated on the said cheques are not maintainable and it amounts to stifling of prosecution and it is against the public policy.

19. The learned counsel for the petitioners also cited various judgments in this regard. As discussed supra without going into the validity of the deed of compromise the cheques issued on the deed of compromise culminated in C.C.No.389 of 2017. Though part of compromise deed executed by the parties, the complaint initiated on the cheques issued on the deed of compromise cannot be sustained. Since originally the petitioners issued the first set of cheques on their liability of payment towards the three HSS Agreements is still pending as per the proceedings under the Negotiable Instruments Act. Therefore the second set of cheques issued only on the basis of deed of compromise and those are not issued for any liability. Also when the very deed of compromise itself is challenged in the suit, the cheques issued on the said deed of compromise cannot be construed as those cheques were issued for discharging their liability.

20. In view of the above discussions, the Criminal Original Petition in Crl.O.P.No.25398 of 2018 is allowed and the proceedings in C.C.No.389 of 2017 pending on the file of VII Metropolitan Magistrate Court, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

***Amended as per order of this court dt.08/07/2019**
Sd\-
Assistant Registrar(CS VI)
22/07/19

//True Copy//

Sub Assistant Registrar

lok

To be Substituted
to the order already
despatched on 15.05.19

To

1. The learned Fast Track Court No.IV, George Town, Chennai

2. The learned VII Metropolitan Magistrate Court, Chennai

+4cc to M/s.Rugan and Arya, Advocate, S.R.No.35481,35480
***+3cc to M/s.Rugan and Arya, Advocate sr.57055**
***+2cc to M/s.AAV Partners, Advocate sr.57480**

Crl.O.P.Nos.21731 to 21737 of 2018 &
Crl.M.P.Nos.14632, 14633, 14635 to 14639,
11888 to 11901 of 2018 and
Crl.O.P.No. 25398 of 2018 &
Crl.M.P.Nos.14464 and 14465 of 2018

KAN(CO)
CS/26/04/2019
nr 22/07/2019