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Crl.O.P.(MD)Nos.9101 and 9102 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.11.2022

PRONOUNCED ON : 12.04.2023

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD)Nos.9101 and 9102 of 2022

and

Crl.M.P(MD)Nos.7011 and 7012 of 2022

**Kevin : Petitioner/Respondent/2nd Accused
in both cases**

-VS-

**Newman : Respondent/Complainant
in both cases**

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to take the file of the respondent in C.C.Nos.495 and 496 of 2018 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli and quash the same.

**For Petitioner : Mr.P.Saranath
in both cases**

**For Respondent : Mr.D.S.Haroon Rasheed
in both cases**

COMMON ORDER

**These Criminal Original Petitions had been filed to quash the cases in
C.C.Nos.495 and 496 of 2018 on the file of the learned Judicial Magistrate**



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No.II, Tiruchirappalli.

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2.The learned Counsel for the Petitioner submitted that the Petitioner is arrayed as second Accused/Respondent before the Court of the learned Judicial Magistrate No.II, Tiruchirappalli in C.C.Nos.495 and 496 of 2018. These Criminal Original Petitions had been filed on behalf of the Accused seeking to quash the criminal complaints in C.C.Nos.495 and 496 of 2018 pending on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, on the ground that after filing of the criminal complaint, the Petitioner/second Accused had appeared before the learned Judicial Magistrate No.II, Tiruchirappalli and sought to settle the dispute amicably. Accordingly, in the terms of the compromise, the second Accused/Petitioner herein had been paying part of the amount in installments. The Complainant had also been receiving the amount partially in installments. In the course of the trial, COVID-19 Lock down intervened thereby there was economic loss to one and all who were in the field of business. Therefore, the Petitioner was unable to pay. The Respondent as Complainant, even though accepted the amount in installments had been simultaneously prosecuting the complaint. Therefore, the Petitioner, who is



arrayed as second Accused before the learned Judicial Magistrate No.II, Tiruchirappalli, had approached this Court to quash the criminal complaints.

The criminal complaints had been prosecuted by the Complainant and taken on trial by the learned Judicial Magistrate No.II, Tiruchirappalli, ignoring the reported ruling of the Hon'ble Supreme Court in the case of ***Gimpex Private Limited -vs- Manoj Goel*** reported in ***2021 SCC OnLine 925 (Crl. A. No.1068 of 2021 in SLP (Crl.) No.6564 of 2019, order dated 08.10.2021)***. The learned Counsel for the Petitioner/second Accused relied on the relevant portions of the above order which is extracted as under:

“38. When a Complainant party enters into a compromise agreement with the Accused, it may be for a multitude of reasons – higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A Complainant enters into a settlement with open eyes and undertakes the risk of the Accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under [Section 138](#) of the NI Act and other remedies under civil law and criminal law.

39. A contrary interpretation, which allows for the Complainant to pursue both the original complaint and the consequences arising out of the settlement agreement, would lead to contradictory results. First, it would allow for the Accused to be prosecuted and undergo trial for two different complaints, which in its essence arise out of one underlying legal liability. Second, the Accused would then face criminal liability for not just the



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violation of the original agreement of the transaction which had resulted in issuance of the first set of cheques, but also the cheques issued pursuant to the compromise deed. Third, instead of reducing litigation and ensuring faster recovery of money, it would increase the burden of the criminal justice system where judicial time is being spent on adjudicating an offence which is essentially in the nature of a civil wrong affecting private parties – a problem noted in multiple judgements of this Court cited above. Most importantly, allowing the Complainant to pursue parallel proceedings, one resulting from the original complaint and the second emanating from the terms of the settlement would make the settlement and issuance of fresh cheques or any other partial payment made towards the original liability meaningless. Such an interpretation would discourage settlement of matters since they do not have any effect on the status quo, and in fact increase the protracted litigation before the court.

40. ... Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the Complainant under the terms of the settlement deed. ...

42. ... *Multiple prosecutions cannot arise from one legal liability under [Section 138](#) of the NI Act and parties must either go to trial or compromise and settle the matter.*

45. ... once the compromise deed dated 12 March 2013 was agreed, the original complaint must be quashed and parties must proceed with the remedies available in law under the settlement agreement.

46. *Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law.*

50. We are unable to accept the line of argument on two grounds. First, as held above, a settlement agreement effaces the original complaint and thus, it is not up to the parties, either Complainant or Accused, to simply reverse the effects of that agreement and relitigate the original complaint.

Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original



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complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under [Section 138](#) of the NI Act and other remedies under civil law and criminal law.

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55.(ii) Based on our analysis in Section C.1 above, we hereby quash the complaint CC Nos.3326-3329 of 2012 and CC Nos.99-101 of 2013.”

Therefore, the Complainant cannot prosecute the complaint in the light of the memo of compromise arrived at between the parties.

3.The learned Counsel appearing for the Respondent/Complainant vehemently objected to the line of arguments put forth by the learned Counsel for the Petitioner stating that the memo of compromise was not at all recorded by the learned Judicial Magistrate No.II, Tiruchirappalli.

4.He further submitted that Crl.O.P.(MD) Nos.629 and 630 of 2018 filed by the Petitioner herein seeking transfer of C.C.Nos.495 and 496 of 2018 on the file of the learned Magistrate No.II, Tiruchirappalli to any one of the Metropolitan Magistrate, Saidapet, Chennai, were dismissed as early as on 30.08.2019. The Respondent/Complainant filed Crl.O.P.(MD) Nos. 4285 and 4286 of 2020 seeking speedy trial and the same was also ordered vide order dated 09.03.2020. The Accused No.3/T.Arunachalam before the



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trial Court had filed separate petitions in Crl.O.P.(MD) Nos.2574 and 2577 of 2021 seeking to quash C.C.Nos.495 and 496 of 2018 were dismissed by this Court on 17.08.2021. Accused No.2/Petitioner herein also filed similar petitions which were also dismissed on 17.08.2020.

5.The learned Counsel for the Respondent also disputed the contention of the learned Counsel for the Petitioners that it is a second round of litigation. The ruling cited by the learned Counsel for the Petitioner will not help the facts of this case.

6.The learned Counsel for the Respondent further submitted that since there is dispute regarding compromise, the Petitions filed by the Accused before this Court had already been dismissed with a direction to the learned Judicial Magistrate No.II, Tiruchirappalli to prosecute the case. Therefore, the contention of the learned Counsel for the Petitioner placing reliance on the reported ruling in ***Gimpex Private Limited -vs- Manoj Goel*** reported in ***2021 SCC OnLine 925 (Crl. A. No.1068 of 2021 in SLP (Crl.) No.6564 of 2019, order dated 08.10.2021)*** cannot be considered by this Court and both the Criminal Original Petitions have to be dismissed as not



maintainable.

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7.On consideration of the rival submissions, the submissions of the learned Counsel for the Petitioner placing reliance on the ruling of the Hon'ble Supreme Court in the case of ***Gimpex Private Limited -vs- Manoj Goel reported in 2021 SCC OnLine 925 (Crl. A. No.1068 of 2021 in SLP (Crl.) No.6564 of 2019, order dated 08.10.2021)*** that when the parties had arrived at an amicable settlement, the settlement agreement subdues the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of the cheque issued subsequently, would then give rise to a fresh cause of action attracting liability under Section 138 of Negotiable Instruments Act and other remedies under the civil law and criminal law. The said citation will not help the Petitioner herein on the ground that the Petitioner filed a memo seeking to record amicable settlement which memo was not recorded by the learned Judicial Magistrate No.II, Tiruchirappalli on the ground that the Complainant refused. It is to be noted that when there is a settlement, without the voluntary action of the Complainant, there cannot be a settlement. Both parties should agree to the terms of the settlement. The Accused claims that there is a settlement. The



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Complainant, who had lost valuable money to the Accused, refuses for an amicable settlement. Under those circumstances, when the Court had not recorded the settlement, the learned Counsel for the Accused before the trial Court/Revision Petitioner herein cannot place reliance on the said ruling which will not help his case.

8.As rightly pointed out by the learned Counsel appearing for the Respondent/Complainant, the Complainant had moved this Court in Crl.O.P.No.4285 and 4286 of 2020 seeking direction to the learned Judicial Magistrate No.II, Tiruchirappalli to complete the trial in C.C.Nos.495 and 496 of 2018 within a time frame fixed by the Court. Accordingly, those petitions were allowed by this Court as per order dated 09.03.2020 directing the learned Judicial Magistrate No.II, Tiruchirappalli, to dispose of C.C.Nos.495 and 496 of 2018 on merits and in accordance with law within a period of three months from the date of receipt of copy of the order. Subsequent to that order only, the Accused had approached this Court by filing these Civil Revisions Petitions seeking to quash the Complaints in C.C.No.495 and 496 of 2018 placing reliance on the reported ruling of the Hon'ble Supreme Court in ***Gimpex Private Limited -vs- Manoj Goel***



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reported in 2021 SCC OnLine 925 (Crl. A. No.1068 of 2021 in SLP (Crl.) No.6564 of 2019, order dated 08.10.2021).

9.Also, the learned Counsel appearing for the Respondent had placed reliance on the earlier order passed by this Court in Crl.O.P.No.3373, 3374, 2577 and 2524 of 2021 filed by the Accused in both the cases along with another Accused Mr.Arunachalam seeking to set aside the order passed by the learned Judicial Magistrate No.II, Tiruchirappalli in Crl.M.P.Nos.73 and 74 of 2021 in C.C.Nos.495 and 496 of 2018 which was the petition filed to recall Complainant himself to mark additional documents under Section 311 Cr.P.C. which was allowed by the learned Judicial Magistrate No.II, Tiruchirappalli as per order dated 09.02.2021. This Court had dismissed those petitions stating that relevancy and other questions raised by the Accused shall be considered in the course of the cross-examination of the Complainant as P.W-1 after recall under Section 311 Cr.P.C. and producing of documents which were produced by the Complainant in O.S.No.2322 of 2017 namely the Letter of Undertaking, Acknowledgment of Risk and Liability and Deed of Indemnity, Judgment and Decree of O.S.No.2322 of 2017. This Court had observed that “it is not proper in allowing these



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petitions by setting aside the order passed by the learned Judicial Magistrate No.II, Tiruchirappalli, in petition under Section 311 Cr.P.C. permitting the Complainant as to recall himself as P.W-1 and to mark documents. It has also observed that the trial Court was conscious of the fact that the documents are relevant for the purpose of deciding the liability. When that being so, without any proper or reasonable ground, the impugned order cannot be set aside. Therefore, this Court does not find any merit in these petitions. The Petitions in Crl.O.P.Nos.2577 and 2574 of 2021 was filed by another Accused/T.Arunachalam to quash the complaint in C.C.Nos.495 and 496 of 2018 on the ground that the said Accused T.Arunachalam resigned from the company before the cheque was issued by the company. Wherein this Court had observed that “It is a settled proposition of law that in case of quashment of the criminal cases, the admitted or sterling quality of documents are only taken into account. The documents relied upon by the petitioner are not admitted documents by the respondents. Therefore, those documents are required to be proved. On the basis of those documents, the criminal complaints against this petitioner cannot be quashed. Hence, he has to work out his remedy before the trial Court.” Therefore, the petition filed by another Accused T.Arunachalam seeking to quash the criminal complaint



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was rejected and dismissed by this Court. All the four Petitions viz., Crl.O.P.Nos.3373, 3374, 2574 and 2577 of 2021 were dismissed on a common ground by a common order dated 17.08.2021. After those developments, the Accused having approached this Court to quash the complaint on the ground that there was a settlement is found unacceptable when the settlement is not accepted by the Complainant and the memo of compromise filed on behalf of the Accused was not recorded by the learned Judicial Magistrate No.II, Tiruchirappalli, the attempt of the Accused as Petitioner before this Court seeking to quash the complaint in C.C.Nos.495 and 496 of 2018 is found to be a second round of litigation to defeat the Complainant from getting his lawful remedies before the Court of the learned Judicial Magistrate No.II, Tiruchirappalli.

10.On a perusal of the status from the Court concerned, it is found that the Accused had been playing hide and seek with the Court concerned in the light of the above developments, when this Court had issued clear direction to the Court to dispose of the case within a reasonable time, the attempt of the Accused to derail the trial cannot be appreciated. The power of the High Court under Section 482 of Cr.P.C. cannot be misused to the



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whims and fancies of the Accused. It is not an Accused friendly procedure ignoring the valuable right of the Complainant/victim of the crime.

11.In the light of the above, **both the Criminal Original Petitions are dismissed** with a direction to the Accused to appear before the learned Judicial Magistrate No.II, Tiruchirappalli and cooperate with the trial.

12.The learned Judicial Magistrate No.II, Tiruchirappalli shall proceed with the trial. If any of the Accused does not cooperate with the Court on day-to-day basis, he shall issue warrant and also cancel the bond for non-cooperation of the Court in the trial proceedings. When the Accused is produced on warrant, even though the case is a bailable offence, the Accused shall be remanded and during the period of remand, the Court can dispose of the case. The jurisdictional Police either the Superintendent of Police, Tiruchirappalli (Rural) or the Commissioner of Police, Tiruchirappalli (City) shall be directed to execute the warrant if the Accused abscond away from the Court fleeing from the due process of law. The learned Judicial Magistrate No.II, Tiruchirappalli, shall address either the Commissioner of Police, Tiruchirappalli (City) or the Superintendent of Police, Tiruchirappalli (Rural)



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as the case may be and for non-execution of warrant, it may be treated as contempt of this Court and the Registry shall address for contempt of this Court against the Police officials concerned in not producing the Accused. By this procedure, the case may be disposed of as early as possible viz., within a reasonable period of three months from the date of receipt of the copy of this order or from the date of uploading the copy of this order on the website of this Court.

Index : Yes / No
Internet : Yes / No
SRM

12.04.2023



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SATHI KUMAR SUKUMARA KURUP, J.

SRM

To

1.The Judicial Magistrate No.II,
Tiruchirappalli.

2.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

Order made in
CRL.O.P(MD)Nos.9101 and 9102 of 2022

12.04.2023