



2024: DHC: 3485



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

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Date of Decision : 24.04.2024

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CRL.M.C. 1013/2023 & CRL.M.A. 3863/2023

VINOD BANSAL

..... Petitioner

Through: Mr. Anuj Chauhan Advocate.

versus

M/S INTEC CAPITAL LTD.

..... Respondent

Through: Mr. Divyansh Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been instituted under Section 482 Cr.P.C. seeking quashing of the Complaint No.886/2018 arising out of the proceedings initiated under Section 138 of the Negotiable Instrument Act, 1881 ('*NI Act*') and pending before the Court of learned CMM, South-East, Saket Courts, New Delhi.

2. The facts in a nutshell are that in the complaint, the respondent/complainant alleged that one *M/s Lord Buddha's Society (Regd.)* ('*company*') availed a financial loan vide Loan Agreement on 23.08.2014, wherein the present petitioner stood as guarantor. In lieu of the aforesaid loan agreement, the petitioner also issued an undated cheque bearing No.40137 drawn on the Oriental Bank of Commerce, Nehru Place, Delhi as a security in favour of the respondent. Upon failure of the company to comply with the terms and conditions of the loan agreement, the said cheque for a sum of Rs.45,25,932/-, when presented for encashment, was



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dishonoured with the remarks '*Funds Insufficient*' vide return memo dated 08.12.2017. Thereafter, the respondent sent a legal demand notice dated 16.12.2017, however, upon the failure of the petitioner to pay the sum under the cheque, the respondent preferred the underlying complaint on 30.01.2018, wherein summon was issued vide order dated 24.03.2018. The petitioner contends that post issuance of the subject cheque, the respondent/complainant had entered into a Deed of Settlement dated 13.05.2016 with the company, the petitioner and some others (second party therein), whereby the entire dispute was settled and wherein the second party had agreed to pay an amount of Rs. 92,50,000/- towards full and final settlement. In furtherance of the settlement agreement, the petitioner also made a payment of Rs.20 lacs towards discharge of part-liability and also issued post dated cheques for the remaining balance amount. However, the said cheque when presented for encashment, was dishonoured. The petitioner would contend that instead of presenting the later cheque for encashment, the respondent opted to present the earlier cheque, which is contrary to the dicta of the Supreme Court in Gimpex Private Limited v. Manoj Goel reported as (2022) 11 SCC 705. The petition is resisted on behalf of the respondent, who submits that the petitioner is liable for the offence under section 138 NI Act.

3. Both the parties have placed reliance on the decision in Gimpex (Supra). The facts involved in the said case were that the parties therein entered into three High Seas Sale Agreements. Subsequently, the accused/ACL issued 18 cheques for a total value of Rs. 9 crores in favour of the complainant/*Gimpex* towards part payment of the outstanding liability. The said cheques, when presented for encashment, were dishonoured with



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the remarks '*payments stopped by drawer*'/'*insufficient funds*'. The complainant filed a complaint under Section 138 NI Act against the ACL as well as its Directors. Additionally, an FIR was also lodged under Sections 409 and 506(1) IPC.

During the pendency of proceedings under Section 482 Cr.P.C. for quashing of the complaint filed by one of the Directors, another Director of the accused company was arrested. During the pendency of the bail application, a compromise was arrived at between the parties, which was duly expressed in a deed of compromise. In line with the terms of the said deed, fresh cheques were issued towards full and final settlement. The proceedings initiated for quashing of the first set of complaint as mentioned above came to be dismissed by the Madras High Court. The cheques issued pursuant to the deed of compromise were also dishonoured and a second complaint was filed under Section 138 NI Act. As such, two sets of complaint were pending against the accused persons. The first w.r.t the dishonour of the initial cheque issued and the second complaint for the dishonour of cheque that was issued in furtherance of the settlement. The accused company and its Directors sought quashing of both sets of complaint vide separate petitions filed under Section 482 Cr.P.C. While dismissing the prayer of the accused persons for dismissal of the first set of complaint, the concerned High Court quashed the second set of complaint. In these facts, the question that arose before the Supreme Court as captioned in paragraph 24 was:-

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24. The question before this Court is whether parallel prosecutions arising from a single transaction under Section



138 of the NI Act can be sustained. In this case, a set of cheques were dishonoured, leading to filing of the first complaint under Section 138 of the NI Act. The parties thereafter entered into a deed of compromise to settle the matter. While the first complaint was pending, the cheques issued pursuant to the compromise deed were dishonoured leading to the second complaint under Section 138 of the NI Act. Both proceedings are pending simultaneously and it is for this Court to decide whether the complainant can be allowed to pursue both the cases or whether one of them must be quashed and the consequences resulting from such quashing.

xxx”

4. The Supreme Court, while taking note of its earlier decisions, observed that ‘allowing prosecution under both sets of complaints would be contrary to the purpose of the enactment’. It was further observed that the proceedings under Section 138 NI Act being quasi criminal, the compensatory aspect of the remedy should be given priority as opposed to the punitive aspect . as the complainant in such cases is primarily concerned with the recovery of money. It was further observed that:-

“xxx

41. 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.

42. 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.

42.1. 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.

42.2. Second, the accused would then face criminal liability for not just the 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.

42.3. 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.

43. Thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. 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. It has been urged by Mr V Giri, learned Senior Counsel, and Ms Liz Mathew, learned counsel, that parallel prosecutions would not lead to a multiplicity of proceedings, as in the present case, both complaints are being tried by the same court. This may be true for the case before us, however, this Court in Damodar S. Prabhu (supra) and Re: Expeditious Trial of Cases (supra) has recognized multiplicity of complaints as one of the major reasons for delay in trial of cases under Section 138 of the NI Act and the consequent choking of the criminal justice system by a disproportionate number of Section 138 cases. While it is true that the trial in this case is before one court, that is not necessarily the ground reality in all cases.

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5. On the aspect of liability arising from the settlement agreement, the Court further observed as under:-

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49. 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. In the present case, the first set of cheques which were issued allegedly towards discharge of the liability under the HSSA were dishonoured. A deed of compromise was entered into thereafter on 12 March 2013. The deed of compromise was partially implemented by the payment of an amount of Rs. 3 crores by demand draft to the complainant. Upon the receipt of an amount of Rs. 3 crores, Gimpex Private Limited was to grant its no objection to the plea of bail of Manoj Goel. Manoj Goel undertook to pay the balance of Rs. 7 crores within three months in instalments. The second set of cheques issued pursuant to the deed of compromise were also dishonoured. The Single Judge of the High Court adverted to clause 9 of the



deed of compromise which stipulated that upon the payment of the entire settlement amount of Rs. 10 crores, all proceedings including the criminal complaints would have to be withdrawn. The Single Judge was persuaded to quash the criminal complaint instituted against Manoj Goel on the basis of the second set of cheques on the ground that:

50.1. Since the proceedings under the NI Act for the dishonour of the first set of cheques was pending, the second set of cheques issued only on the basis of the deed of compromise could not be construed as being towards the discharge of a liability.

50.2. The validity of the deed of compromise had been challenged in the suit pending before the High Court.

51. Each of these grounds which weighed with the Single Judge of the High Court in our view is misplaced. Once the ingredients of Section 138 of the NI Act are fulfilled, the statute clearly stipulates that “such person shall be deemed to have committed an offence”. Thus, once the ingredients of Section 138 are fulfilled, a distinct offence arises in respect of the dishonour of the cheques in question. There was no basis for the learned Single Judge to conclude, particularly in the course of the hearing of a petition under Section 482 of the CrPC that the second set of cheques issued in pursuance of the deed of compromise cannot be construed as being towards the discharge of a liability. The question as to whether the liability exists or not is clearly a matter of trial. There was a serious error on the part of the Single Judge in allowing the petition under Section 482 to quash the prosecution on the basis that the deed of compromise would not constitute a legally enforceable liability. The mere fact that a suit is pending before the High Court challenging the validity of the compromise deed would furnish no cogent basis to quash the proceedings under Section 138.

52. Mr Jayant Bhushan, learned Senior Counsel has made an earnest attempt to urge that under Section 39 of the Indian Contract Act 1872 when a party to contract has refused to



perform his promise in its entirety; the promisee has the option of putting an end to the contract unless he signifies his acquiescence in its continuance. Learned Senior Counsel submitted that since proceedings under Section 138 are in the nature of a civil wrong, though the legislature has imparted criminal sanctions. The deed of compromise, according to the submission, represented a novation. Extending this line of argument, it was urged that it was the appellant who did not withdraw the criminal proceedings and pursued with the arbitration in which event its conduct must be construed to amount to repudiation of the settlement. Thus, it has been urged that the appellant can only insist on the enforcement of the liability in relation to the first set of cheques.

53. 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 relating to the same underlying transaction under Section 138 of the NI Act. Second, the breach of the deed of compromise has arisen due to the dishonour of the cheques which were issued by the accused towards discharge of the remaining balance of Rs. 7 crores. In this backdrop, it was farfetched for the High Court to have quashed the proceedings in exercise of its jurisdiction under Section 482. For as a two judge Bench of this Court held in HMT Watches Ltd. v. M.A. Abida.

“10. [...] Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the



matter which were not admitted between the parties.”

54. Following the above principle, another decision of a two judge Bench in Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.³² held:

“16. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.

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6. As apparent from the dictum of the Supreme Court as reproduced above, it is apparent that a subsequent settlement agreement subsumes the complaint filed qua the dishonour of the initial cheque and as such the proceedings initiated under the initial complaint can no longer be maintained and the cause of action for the said complaint no longer exists. Once such settlement is arrived at, a fresh cause of action would arise only if there is a dishonour of cheque issued pursuant to the said settlement. In such a situation, the complainant would not be allowed to restore the initial complaint as that would lead to a situation wherein two parallel proceedings would exist: one qua the dishonour of the initial cheque and one qua the dishonour of the subsequent cheques.

7. Applying the dicta of the Supreme Court in Gimpex (Supra) to the facts of the present case, it is clear that the respondent/complainant could not have maintained a complaint qua the initial cheque issued by the petitioner in his capacity as a guarantor inasmuch as once the parties had entered into a



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settlement, the respondent could only have gained a cause of action once the cheque issued in pursuance of the settlement were dishonoured. The respondent's contention that there are no two complaints, the present being the only complaint filed after the dishonour of cheques on settlement, is meritless. Allowing the respondent to pursue a complaint qua the initial cheque issued would run contrary to the terms of the settlement arrived at between the parties and would also run afoul of the above noted legal principles expounded in Gimpex (Supra).

8. Consequently, the petition is allowed and the proceedings against the petitioner are quashed. Pending application is also disposed of.

**MANOJ KUMAR OHRI
(JUDGE)**

APRIL 24, 2024

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