



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

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Date of Decision: 17.05.2024

+ **CRL.M.C. 2712/2024 & CRL.M.As. 10329-30/2024**

K. JEGANATHAN

..... Petitioner

Through: Mr. Antony R. Julian, Advocate.

versus

P. SAMPATH

..... Respondent

Through: Mr. T.K.A. Padmanabhan and Ms.
Pooja Iyer, Advocates.

AND

CRL.M.C. 2713/2024 & CRL.M.As. 10331-32/2024

K. JEGANATHAN

..... Petitioner

Through: Mr. Antony R. Julian, Advocate.

versus

P. SAMPATH

..... Respondent

Through: Mr. T.K.A. Padmanabhan and Ms.
Pooja Iyer, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petitions filed under Section 482 Cr.P.C., the petitioner seeks quashing of complaint cases bearing Nos. 1813/2019 and 1458/2021 instituted by the respondent against the petitioner under Section 138 NI Act.



2. Since the petitions arise out of transactions undertaken between the same parties, the same are taken up for consideration together and disposed of vide this common order.

3. In complaint case bearing No.1813/2019, it has been alleged that the complainant/respondent had advanced a total loan of Rs. 2,30,00,000/- to the petitioner/accused vide two loan agreements dated 31.01.2017 and 08.02.2018. Consequently, in discharge of his liability, the petitioner issued two cheques bearing Nos. 000678 (for an amount of Rs.44,00,000/-) and 000679 (for an amount of Rs.1,86,00,000/-). When the said cheques were presented for encashment, the same were returned dishonoured with the remark 'funds insufficient' vide return memo dated 12.12.2018. A demand notice dated 22.12.2018 came to be issued by the respondent, to which a reply dated 11.01.2019 was sent by the petitioner. Upon petitioner's failure to repay the amounts under the cheque, the said criminal complaint came to be filed.

In complaint case bearing No.1458/2021, it has been alleged that the complainant/respondent had advanced a total loan of Rs.75,00,000/- at certain agreed upon interest rate to the petitioner/accused, out of which the amount of Rs.40,00,000/- was advanced vide two distinct loan agreements. Part payment of the entire loan amount was made and thereafter, in order to repay the balance amount of Rs.11,16,875/-, the petitioner issued a cheque bearing No. 000680. When the said cheque was presented for encashment, the same was returned dishonoured with the remark 'stop payment' vide return memo dated 30.12.2020. A demand notice dated 07.01.2021 came to be issued by the respondent, to which a reply was issued by the petitioner on 26.01.2021. Upon petitioner's failure to repay the amount under the cheque,



the said criminal complaint came to be filed.

4. Learned counsel for the petitioner submits that during the pendency of the proceedings in the abovementioned criminal complaints, the respondent invoked arbitration to settle the disputes between them and during the said arbitral proceedings, a settlement was arrived at vide settlement agreement dated 07.02.2023. On the basis of the said settlement agreement, a consent award dated 01.03.2023 also came to be passed. It is stated that as per the terms of the settlement, it was agreed that the said agreement is comprehensive and would include all the outstanding transactions between the parties, over and above the loan agreement mentioned therein. Further, the parties had agreed to settle their dispute for an amount of Rs.2,65,000/- plus interest, which was payable by way of two separate tranches/instalments. In line with the same, the petitioners issued two fresh undated cheques bearing Nos. 000908 and 000910 for an amount of Rs.1,40,00,000/- and Rs.1,39,26,370/- respectively.

It is further stated that though the petitioner made repeated efforts to make the payment within the stipulated time, the respondent did not render cooperation. The respondent presented the cheques, that were given after settlement, for encashment without notice to the petitioner. On 04.10.2023, the cheques were returned dishonoured with the remark 'insufficient funds'. Respondent issued a legal notice dated 11.10.2023 for the said dishonour, which was replied to by the petitioner vide reply dated 17.10.2023, wherein it was stated that the respondent had failed to adhere to the terms of the settlement arrived at between them.

It is contended that in view of the settlement arrived at between the parties, the abovementioned criminal complaints for the earlier issued



cheques cannot be allowed to be continued against the petitioner. Reference in this regard is made to the decision of the Supreme Court in Gimpex Private Limited v. Manoj Goel reported as (2022) 11 SCC 705.

5. Learned counsel for the respondent, on the other hand, has resisted the present petitions. While the factum of settlement arrived at between the parties is acknowledged, he contends that since the factum of settlement arrived at between the parties was not recorded/noted in the proceedings pending under Section 138 NI Act, the same cannot be considered to have the effect of rendering the complaint no longer maintainable. In this regard, he has referred to the decision dated 12.04.2023 passed by the Madras HC in CRL.O.P.(MD) Nos. 9101 and 9102/2022 titled as 'Kevin vs Newman'.

6. I have heard learned counsels for the parties and also perused the material placed on record.

7. At the outset, it must be observed that both the parties have admitted to the factum of settlement arrived between them vide Settlement Agreement dated 07.02.2023, which also culminated in the passing of a consent award dated 01.03.2023 in the arbitral proceedings initiated by the respondent. The only contention raised on behalf of the respondent is that as the factum of settlement has not been duly recorded/noted before the trial court in the proceedings initiated under Section 138 NI Act, the same cannot form the basis for non-continuation of the said proceedings or their quashing, as sought by way of present petitions.

8. In Gimpex (Supra), the issue that arose before the Supreme Court was with regard to the continuation of two parallel proceedings under Section 138 NI Act: 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 Supreme Court 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 recovery of money. It was observed that:-

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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.

xxx”

(emphasis added)

9. It is apparent from the dictum of the Supreme Court as reproduced above 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 that the cause of action for the said complaint no longer exists. Once such a 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 the present case, once the parties have settled their dispute, and in the said settlement, it has been recorded that the settlement is towards all outstanding transactions between the parties, over and above the loan agreements mentioned therein, the subject criminal complaints are subsumed within the settlement and can no longer survive.

10. Insofar as respondent's contention that the factum of settlement must be recorded/noted in the Section 138 proceedings for the same to have any effect, this Court finds no merit in the said contention. While the respondent has referred to the judgement of Madras HC in Kevin (Supra), the same does not provide much assistance to the contention of the respondent. In the facts pertaining to said case, though a memo was filed to record settlement, the same was never recorded as the complainant had refused settlement. Owing to the said reason, it was observed that due to the failure of the learned Magistrate to record the memo of settlement, the same could not form the basis of quashing of the complaint case therein. The relevant observations of the Madras High Court are as under:-

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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 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.

xxx”

11. However, in the present case, the factum of settlement is not disputed by the respondent/complainant and indeed the said settlement has also been made the basis of the consent award passed in the arbitral proceedings instituted by the respondent.

12. Considering the aforesaid factual and legal position, this Court is of the considered opinion that the continuation of the criminal complaints against the petitioner would be an abuse of process of law. Consequently, the present petitions are allowed and the complaint cases bearing Nos. 1813/2019 and 1458/2021 are quashed. However, it is clarified that the respondent shall be at liberty to pursue his remedies, as available and in accordance with law, qua the dishonour of the cheques issued pursuant to



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the settlement arrived at between the parties.

13. The present petitions alongwith pending application(s) are disposed of in the above terms.

**MANOJ KUMAR OHRI
(JUDGE)**

MAY 17, 2024