IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.269 OF 2023

PETITIONER : 1) **Sharda w/o Ganeshrao Pawar**
@ Shardha D/o Vasantrao Kadam,
Age : 40 Occu. House hold,
R/o Congress Nagar, Buldhana,
Ta. & Dist. Buldhana.

..VERSUS..

RESPONDENT : 1) **Kishor Sopanrao Shilwant,**
Age : 63 years, Occu. : Business,
R/o. Kishor Kunj, Pathak Galli,
Ward No.9, Buldhana, Tal. & Dist. Buldhana.

Mr. A.S. Mardikar, Senior Advocate a/b, Mr. M.V. Rai, Advocate for petitioner
Mr. V.K. Paliwal, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATE : 14th FEBRUARY, 2025

DATE OF RESERVING THE JUDGMENT : 13.02.2025
DATE OF PRONOUNCING THE JUDGMENT : 05.05.2025

ORAL JUDGMENT :

1. Heard.

2. **Rule**. The Rule is returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. By way of present petition, a prayer is made for quashing Summary Criminal Case No.570 of 2018 dated

20.02.2018, pending before the learned 3rd Judicial Magistrate First Class, Buldhana, for the offence punishable under Section 138 of the Negotiable Instruments Act (NI Act) read with Section 420 of the Ind ian Penal Code (IPC).

4. The brief facts of the present case are as under:

The respondent herein filed a proceeding under Section 138 of the NI Act read with Section 420 of the IPC before the learned Magistrate to punish the present petitioner and further to compensate the respondent by directing the petitioner to pay double amount of a cheque in question.

5. It is the case of the respondent that the respondent-complainant, being Ex-Secretary of the Rajeshwar Education Society (Regd. No.2898/Buldhana), Buldhana, entered into an agreement with the present petitioner to transfer management of the Society along with its assets. This agreement was formalized on 23.02.2012, in the presence of witnesses. As per the terms and conditions of the said agreement, it was agreed that the petitioner will secure and obtain loan of Rs.1 Crore 70 Lakhs (One Crore Seventy Lakhs) from Vidarbha Nagari Cooperative Credit Society, Buldhana. Subsequently, the complainant handed over the Society's documents to the petitioner and received a receipt. However, the petitioner failed to reimburse the agreed amount. A follow-up agreement was made on 15.04.2013, reaffirming the original terms with modifications, but the petitioner still did not fulfill the payment obligations within the agreed time-frame.'

6. The petitioner was granted extensions to reimburse a debt until 2017, based on their request, affirming the ongoing legal obligation. When the petitioner failed to repay by the deadline, the complainant made it clear that complainant will file criminal complaint against the petitioner. In response, the petitioner agreed to pay via a post-dated cheque.

7. Thus, lastly on 11.07.2017, the petitioner agreed to hand over the post dated cheque of Rs. 4,69,72,000/- (Rs. Four Crore Sixty Nine lakhs Seventy Two Thousands only) towards the one time final settlement of the liability of reimbursement. The petitioner issued a post-dated cheque (No. 000020) from the Bank of Baroda, Ambejogai Branch, for Rs.4,69,72,000/-

dated 23.11.2017, from her account (09880100002390).

8. The complainant submitted the cheque for encashment in the first week of December 2017 at the Bank of Maharashtra, Buldhana. However, the cheque was returned on 18.12.2017, with a memo stating "opening balance insufficient and account is dormant," resulting in its dishonor.

9. Accordingly, the above referred Summary Criminal Case was filed by the applicant/respondent.

10. On 15.05.2018, the learned Magistrate issued process. Thereafter, the matter was settled between the parties before the Lok-Adalat and the same was filed before the learned Magistrate, on an affidavit.

11. Thereafter, the application was moved to accept the settlement and to pass an appropriate order on the settlement. The said application was moved on 28.06.2021 and on the same day, the learned Magistrate passed the following order:

> *"The Complainant and accused alongwith their advocate are present. It is jointly submitted that the dispute is settled out side the Court, any it is agreed by the accused that the amount will be paid as per terms*

and conditions mentioned in this application.

Hence, the application is allowed."

12. Thereafter, on 30.10.2021 i.e. after about four months, the respondent moved an application (Exh.62) for cancellation of the settlement on the ground that under pressure, the respondent signed the settlement deed. The application was strongly opposed by the petitioner by filing reply (Exh.69).

13. The learned Magistrate, vide order below Exh. 62 dated 01.01.2022, rejected the prayer of the respondent to cancel the compromise, observing that the Court has no such powers to cancel the compromise once the matter has been settled.

14. The said order was the subject matter of criminal writ petition No.51 of 2022 before this Court, which came to be dismissed on the ground that if the petition is allowed, it would be nothing short of directing the parties to accept the settlement terms set out in the compromise deed. Hence, this application is filed for quashing the summary criminal case.

15. I have heard the learned counsel for the respective parties.

16. The learned Senior Advocate for the petitioner submits that in view of the well settled principles of law, once the parties entered into the settlement, the proceeding under the original complaint cannot be sustained and fresh cause of action arises to the complainant in terms of the settlement deed. He further submits that thus, the criminal proceeding in question cannot be permitted to go on in view of the settlement entered into between the parties. For this purpose, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of ***Gimpex Private Limited Vs. Manoj Goel***[1].

17. He further submits that the compromise arrived at before the Lok-Adalat in the complaint case under Section 138 of the NI Act, is deemed decree of a Civil Court and this legal fiction must be given its full effect. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***K.N. Govindan Kutty Menon Vs. C.D.***

1 (2022) 11 SCC 705

Shaji[2].

18. On the other hand, the learned counsel for the respondent opposed the present writ petition and submits that in this case, there are no parallel proceedings as held in the case of *Gimpex Private Limited* (supra). He submits that the original proceeding was not disposed of by recording the settlement and it was pending. When the application was moved for cancellation of settlement. He therefore, submits that there are no two parallel proceedings, but only one proceeding is pending. He accordingly, submits that there is no merits in the present petition.

19. He further argues that since the signature was obtained under pressure on the compromise deed, the respondent has every right to move such application for cancellation of such compromise.

20. In light of the rival submissions of both the parties, I have perused the record and the relevant documents. In the case of *Gimpex Private Limited* (supra), the Hon'ble Supreme Court had an occasion to deal with a situation where the

2 (2012) 2 SCC 51

compromise was arrived at between the parties in the proceeding under Section 138 of the NI Act and subsequently, since the terms were not complied with, another proceeding was filed. The Court has recorded its observations on two parallel proceedings, which read thus :

> *"32. Thus, under the shadow of Section 138 of the NI Act, parties are encouraged to settle the dispute resulting in ultimate closure of the case rather than continuing with a protracted litigation before the court. This is beneficial for the complainant as it results in early recovery of money; alteration of the terms of the contract for higher compensation and avoidance of litigation. Equally, the accused is benefitted as it leads to avoidance of a conviction and sentence or payment of a fine. It also leads to unburdening of the judicial system, which has a huge pendency of complaints filed under Section 138 of the NI Act.*
>
> *33 to 35 ...*
>
> *36. It is in this backdrop that we must now analyse the issue regarding pendency of parallel proceedings for complaints under Section 138 of the NI Act. The question that arises for our consideration is whether once the settlement has been entered into, the complainant can be allowed to pursue the original*

complaint under Section 138 of the NI Act.

37 to 39 ...

40. Allowing prosecution under both sets of complaints would be contrary to the purpose of the enactment. As noted above, it is the compensatory aspect of the remedy that should be given priority as opposed to the punitive aspect. The complainant in such cases is primarily concerned with the recovery of money, the conviction of the accused serves little purpose. In fact, the threat of jail acts as a stick to ensure payment of money. This Court in R. Vijayan v. Baby [R. Vijayan v. Baby, (2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520] has emphasised how punishment of the offender is of a secondary concern for the complainant in the following terms : (SCC p. 267, para 17)

"17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of

the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary."

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. The Court noted that the second cheque was issued by Manish Arora for arriving at the settlement in his personal capacity and not in discharge of a debt or liability of the company. There was only one transaction between Manish Arora and Ashish Narula and the complainant for which there was an order of conviction and punishment. It was in this background that the Court held that the question of entertaining the second complaint against the appellants did not arise because the cheques Issued pursuant to the settlement were not issued in discharge of the debt or liability of the company of which the appellants were the directors. Thus, the decision in Lalit Kumar

Sharma (supra) is not applicable in the present case as there was already an adjudication on the question of liability and a conviction with respect to the first cheque. The second complaint was misconceived as the trial in the first complaint had been taken to its logical conclusion and there remained no pending liability. Thus, there were no parallel proceedings that were pending with regards to the same transaction. The first complaint had concluded, only after which the Court observed that the second complaint could not be initiated. In fact, Lalit Kumar Sharma (supra) bolsters the case that 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.

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 [Damodar

S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] and Expeditious Trial of Cases Under Section 138 of NI Act 1881, and Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, (2021) 16 SCC 116] has recognised 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."

21. Thus, it is evident that a question before the Hon'ble Supreme Court was, whether once the settlement has been entered into, the complainant can be allowed to pursue the original complaint under Section 138 of the NI Act.

22. While answering the said question, the Hon'ble Supreme Court has categorically held that once the parties have voluntarily entered into an agreement and agreed to abide by the consequences of non-compliance of the same, they cannot be allowed to reverse the effect of the agreement by pursuing both original complaint and subsequent complaint, arising out of such non-compliance. It is further held that the settlement agreement subsumes the original complaint. The non-compliance of the terms of the settlement agreement or dishonored the cheque issued subsequent to it, would then give rise to a fresh cause of action and other remedies under Civil Law and Criminal Law.

23. The Hon'ble Supreme Court of India, therefore, expressed a view that the complainant cannot pursue two parallel prosecutions from the same underlying transaction. Once the settlement agreement has been entered into by the party, the proceeding under the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of settlement deed.

24. In the teeth of the above referred observations, I have reverted back to the facts of the present case. In the present matter, there is no dispute about the settlement agreement entered into between the parties dated 28.06.2021. As per the said agreement, it was agreed between the parties that in an addition to the payment made to the complainant to the tune of Rs.21,38,000/-, Rs.20,00,000/- was paid to the complainant through Demand Draft (DD) on 28.06.2021 before the Court i.e. total Rs.41,38,000/-. As regards the balance amount to the tune of Rs.33,62,000/-, it was agreed that in the first Lok-Adalat, after 28.02.2021, the said amount would be paid by the petitioner herein to the respondent and thereafter, all the litigations would be withdrawn.

25. However, before the time period fixed for payment of balance amount, the application for cancellation of the settlement was filed, by moving the application (Exh.62). The same came to be rejected by the learned Magistrate vide order below Exh.62 dated 01.01.2022 on the ground that there is no such powers to cancel it.

26. The said order was upheld by this Court vide order dated 08.02.2023, passed in Criminal Writ Petition No.51 of 2022.

27. Both the proceedings namely, the application (Exh.62) filed before the learned Magistrate and Criminal Writ Petition No.51 of 2022 filed before this Court, were filed by the respondent herein and because of rejection of the application (Exh.62) and the Criminal Writ Petition No.51 of 2022, the compromise between the parties subsists and not cancelled.

28. In the case of ***Gimpex Private Limited*** (supra), the facts were similar as of the present case. In the said case, a compromise was entered into by the parties and against the same, a DD of Rs.3 Crores was handed over to the complainant and the balance amount of Rs.7 Crores was decided to be paid within three months in three equal installments. There was also a condition which was similar with the condition in the present matter i.e. upon payment of entire settlement amount, the pending criminal complaint, suits, arbitration proceedings and Section 138 proceedings would be withdrawn.

29. In the said case, the cheques issued for payment of balance amount under the settlement, had been dishonoured. In the said backdrop, after framing of a question, whether once the settlement has been entered into, the complainant can be allowed to pursue the original complaint under Section 138 of the NI Act, the Hon'ble Supreme Court of India, as observed herein above, recorded the answer to the effect that once the settlement agreement has been entered into by the parties, the proceeding under the original compliant cannot be sustained and a fresh cause of action accrues to the complainant under the terms of settlement deed. The non-compliance of the terms of the settlement agreement 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.

30. Having observed that the facts in the case of ***Gimpex Private Limited*** (supra) and the facts of the present case, are similar, as regards the settlement and subsequently, non compliance of the terms of the settlement deed, the law laid down in the said case will squarely apply to this case.

31. Therefore, based on the above referred discussion, in my considered view, once the compromise deed dated 28.06.2021 was agreed between the parties, the original complaint must be quashed and the parties must proceed with the remedies available in law, under the settlement agreement.

Accordingly, I pass the following order:

(i) The Criminal Writ Petition is **allowed**.

(ii) The Summary Criminal Case No.570 of 2018 dated 20.02.2018, pending before the learned 3rd Judicial Magistrate First Class, Buldhana, for the offence punishable under Section 138 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code, is hereby quashed and set aside with liberty to the respondent to pursue the remedies as available in law.

Rule accordingly.

(ANIL S. KILOR, J.)