



2025:DHC:1511



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

% ***Pronounced on: 28th February, 2025***

+ **CRL.M.C. 2928/2021 & Crl.M.A. 18466/2021**

SATISH KUMAR PAWA

.....Petitioner

R/o D-842, Second Floor,
New Friends Colony,
New Delhi-II 0065

Through: Mr. A Mishra, Mr. Sahil,
Mr. Nidesh Gupta, Mr. Shubham,
Advocates

Versus

1. STATE OF NCT OF DELHI

Delhi Secretariat Complex,
7th Level, B-Wing & 5th Level,
A-Wing, I. P. Estate,
New Delhi-II 0002

.....Respondent No. 1

2. Mr. Anup Kumar HUF

Through Anup Kumar
B-279, Yojna Vihar,
Delhi-11 0092

.....Respondent No. 2

3. M/s Jagat Overseas

At: 5586, Third Floor, Lahori Gate,
Naya Bazar, Delhi-II 0006

.....Respondent No. 3

4. Mr. Sant Lal Agarwal

Partner at M/s Jagat Overseas
5586, Third Floor, Lahori Gate,
Naya Bazar, Delhi-I 10006

.....Respondent No. 4

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Through: Mr. Shoaib Haider, Additional
Public Prosecutor for Respondent
No.1-State

Mr. Ateev Mathur & Mr. Amol
Sharma, Advocates for Respondent
No.2

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present petition under Section 482 of *the Code of Criminal Procedure, 1973* (henceforth referred to as the '*Cr.P.C.*') has been filed against the Order dated 02.07.2019 of the learned ACMM whereby Complaint under Section 138 of the *Negotiable Instruments Act, 1988* filed by the Complainant in respect of dishonor of cheque of Rs.50 Lacs against the partners/Partnership Firm, was compounded *qua* one of the Partner/Sant Lal Aggarwal, on receiving of Rs.25 Lacs from him, but continued against the second Partner/ Petitioner.
2. Aggrieved by the said Order of partial compounding, present Petition has been filed to challenge the *partial compounding* on the assertion that the liability of the two accused/ partners of the Partnership Firm (unregistered) was joint and several and thus, should not have been permitted. Quashing of the Complaint is therefore, sought by the Petitioner against himself in terms of compounding of the offence *being* the Partner of the Firm.
3. ***Briefly stated***, Respondent No.2/Mr. Anup Kuma, Karta of a Hindu

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Undivided Family (HUF), who is in the business of investment in Shares and Rental Properties, was approached by Respondent No.4 Mr. Sant Lal Aggarwal, on behalf of Respondent No.3/M/s *Jagat Overseas (unregistered Partnership Firm)* for providing a friendly loan. Because of their cordial relations, he acceded to their request and extended a friendly loan of Rs.50,00,000/- and transferred the money through RTGS No. 033519 to the account of Respondent No.3. In order to secure the loan, Respondent No.2, Mr. Sant Lal Aggarwal, Partner of M/S Jagat Overseas, executed a Demand Promissory Note dated 20.01.2012 for a sum of Rs.50,00,000/- and a Receipt acknowledging having received Rs.50,00,000/- from Respondent No.2/Complainant, in addition to a posted date Cheque in the same amount. The Respondents agreed that the loan amount shall be repaid as and when demanded by Respondent No.2 and also agreed to pay interest @9% per annum till repayment of the whole amount.

4. Respondent No.3/M/s *Jagat Overseas*, in its Letter dated 31.03.2015, admitted its legal liability to make the payment to the Respondent No.2 and also requested for extension of time period for repayment, to which the Respondent No.2 agreed *vide* Letter dated 18.04.2015 subject to certain conditions and specifically stated that if the dues are not paid, the post-dated Cheque shall be presented for realization.

5. The Cheque was presented for payment on 06.04.2015, but was dishonoured with the Return Memo "*Insufficient Funds*". Respondent No.2 sent a Legal Notice dated 10.07.2015 to Respondent No.3/M/s *Jagat*



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Overseas and its Partners, Mr. Sant Lal Aggarwal and Mr. Satish Kumar Pawa, but they failed to discharge their liability.

6. Respondent No.2 thus, filed a Complaint under Section 138 read with Section 141 of the *Negotiable Instruments Act, 1881* against Petitioner and Respondents No.3 & 4.

7. Learned Metropolitan Magistrate ('MM') took cognizance of the Complaint and issued summons to all the accused persons, namely, Petitioner, Respondent No.3/M/s *Jagat Overseas* and Respondent No.4/Mr. Sant Lal Aggarwal, on 19.11.2015, in response to which Petitioner and Respondent No.4 appeared before the learned MM.

8. The learned MM *vide* Order dated 07.03.2018 observed that "*as unregistered partnership firm is only a compendious name under which the activity of the firm carried out and it is not a legal entity with respect to an unregistered partnership firm with respect to any act or omission attributable act the partners would be liable*".

9. Notice under Section 251 Cr.P.C. for the offence under Section 138 of the *Negotiable Instruments Act*, was framed against Satish Kumar Pawa and Sant Lal Aggarwal, the two Partners and not against the Firm, *to which they pleaded not guilty*.

10. At the stage of *Complainant's evidence*, the parties entered into compromise talks which eventually fructified between the Complainant and Respondent No.4/Sant Lal Agarwal.

11. The learned MM *vide* Order dated 02.07.2019, took note of the settlement between the Complainant and Sh. Sant Lal for a sum of Rs.25,00,000/-, out of which Rs.20,00,000/- stood already paid and

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balance Rs.5,00,000/- was paid before the learned MM. The Complainant thus, compounded the offence under Section 138 N.I. Act *qua* Respondent No.4/Sant Lal Agarwal, who was acquitted of the offence. However, the Complaint was continued against the Petitioner Satish Kumar Pawa, the second Partner, even after compounding of the offence.

12. The Petitioner has thus, filed the present Petition seeking quashing of the Complaint under Section 138 read with Section 141 *Negotiable Instruments Act, 1881* asserting that in view of Orders dated 07.03.2018 and 02.07.2019, the Complaint does not survive on account of compounding on behalf of the Partnership Firm.

13. ***Learned Counsel for the Petitioner has submitted*** that Petitioner had been impleaded as an accused by virtue of Section 141 of the N.I. Act, making him vicariously liable for the offence committed by the Partnership Firm; unless it is determined that the offence has been committed by the Partnership Firm, he as Partner, cannot be held liable for the offence. Consequent upon acquittal of Respondent No.4 *vide* Order dated 02.07.2019, the Complaint does not survive against the Petitioner, as has been held in a catena of judgments by the Apex Court that in the absence of principal offender, the Complaint cannot be proceeded with against the Officers, Director of the Companies and Partners of the Firm.

14. Admittedly, the cheque in question had been signed by Respondent No.4 on behalf of Respondent No.3/M/s *Jagat Overseas, the Partnership Firm*. Further, to secure the payment of the cheque amount, Respondent

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No.4 had signed the Promissory Note in favour of the Complainant. Since the offence has already been compounded with Respondent No.2 and he has been acquitted, no trial can proceed against the Petitioner alone and he cannot be held liable under Section 138 of the Act.

15. In addition, it is asserted that in fact, no loan was advanced by the Complainant to the Partnership Firm; rather it was the amount paid in discharge of its liability towards supply of rice/paddy. The *mala fide* Act of Respondent No.4 cannot be held binding upon the Petitioner. No letter was ever sent by the Firm to the Complainant qua admission of its liability. Neither the Partnership Firm nor the Petitioner had received the alleged legal Notice dated 18.04.2015 sent by the Complainant.

16. The Respondent No.4 has been *malafidely* acting against the interest of Partnership Firm. The alleged Loan transaction and the issuance of Promissory Note was done by Respondent No.4, without prior consent of the Petitioners, which is in contravention of the terms and conditions of Clause-10 of Deed of Partnership dated 01.01.1995. Therefore, the sole responsibility of the transaction was on Respondent No.4, against whom the offence has already been compounded and the Complaint does not survive against the Petitioner.

17. Reliance is placed upon decision in *Dilip Hariramani Vs. Bank of Baroda*, 2022 SCC OnLine SC 579.

18. It is also asserted that Petitioner and Respondent No.4 are the Partners having equal share in the ratio of 50% each. However, he has never been engaged in the day-to-day affairs of the Partnership Firm. Furthermore, the Petitioner at the relevant time and even as on given



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dates, did not have access to the place of business, i.e. Third floor, Lahori Gate, Naya Bazar, Delhi. For *these illegal and mala fide acts* of Respondent No.4, the Petitioner has already preferred Arbitration proceedings, which have been stayed by the Supreme Court.

19. Hence, a prayer is made for quashing of the Complaint.

20. ***Respondent No.2/Complainant in its Reply has asserted*** that Petitioner is admittedly one of the partners and the second partner Mr. Sant Lal Agarwal, have 50% share in Respondent No.3/Firm, which has not been disputed. The allegation of the Petitioner that Respondent No.4 was working against the interest of the Firm, is not tenable. He admits himself to be one of the Partnership Firm and is responsible for day-to-day affairs of the Firm; he may have separate action against Respondent No.4 in regard to his acting against the interest of the Firm, but the Complainant has no concern with it as he had dealt with the Firm through its Partner/ Respondent No.4.

21. The assertion that since no separate Notice under S.251 NI Act has been framed on the Partnership Firm, he cannot be held vicariously liable for the acts of the Firm, is also not tenable under Law as being a Partner in the Firm, he has equal responsibility for the affairs of the Partnership Firm.

22. *It is further submitted on behalf of the Complainant* that under *Section 257 Cr.P.C.*, it is the discretion of the Complainant to withdraw the Complaint against one or the other accused persons. The Complainant has exercised his discretion under Section 257 Cr.P.C. and withdrawn the Complaint against one Partner on account of settlement



with him.

23. Furthermore, Section 25 of the *Partnership Act, 1932* clearly enjoins that the liability of each partner is joint and several. Therefore, the Petitioner being a partner in the Partnership Firm, is severally liable for the amount due from the Firm.

24. It is therefore, submitted that the impugned Order does not suffer from any infirmity and the present petition is liable to be dismissed.

25. **Submissions heard and record perused.**

26. The *core legal issue* which has been raised by the Petitioner is whether in a case under Section 138 of N.I. Act, against the Partnership Firm, compounding by one partner would be in discharge of the entire liability of the Partnership Firm or it can be apportioned to the partners individually.

27. The Complaint under Section 138 of N.I. Act was filed against the Respondent No. 3/M/s *Jagat Overseas*, the Partnership Firm in which the Petitioner/Satish Kumar Pawa and the Respondent No.4/Sant Lal Agarwal were the two partners, having their share in the ratio of 50:50. The averments in the Complaint were that the Partnership Firm/ Respondent No. 3/M/s *Jagat Overseas*, had issued Post-dated Cheque of Rs. 50,00,000/- under the signatures of Respondent No. 4/Sant Lal Agarwal, the partner, drawn on State Bank of India, which on presentation, was dishonored for “*funds insufficient*”.

28. It is evident from the contents of the Complaint and the Cheque in question, that the liability incurred was by the Partnership Firm and the Cheque had also been issued for and on behalf of the Partnership Firm



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under the signatures of Respondent No.4 Sant Lal Agarwal, one of the partners.

29. The ***First aspect*** for consideration is ***whether a criminal case can be filed against an unregistered Partnership Firm.***

30. Section 69 of the *Partnership Act* provides for the effect of non-registration. *Clause (2) of Section 69* states that no Suit to enforce a right arising from a Contract, shall be instituted in any Court by or on behalf of a Firm against any third party unless the Firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the Firm. Section 69 of the *Partnership Act* clearly stipulates *the filing of Suits* which are confined to proceedings under Code of Civil Procedure and not to criminal offences. The word 'Suit' in common parlance means a process instituted in the Court for recovery or protection of right or enforcement of a claim or redressal of civil injuries. It does not encompass any criminal liability.

31. Section 142 of N.I. Act deals with '*cognizance of offence*' and provides that the Complaint under Section 138 of NI Act in writing, can be made by the Payee or holder in due course. The Legislature in its wisdom, has used the word 'Complaint' and not 'Suit' in Section 142 of N.I. Act thereby indicating that the bar created for maintaining a Suit in Section 69 of the Partnership Act by or against an unregistered Firm, cannot be stretched and applied to maintain a criminal proceeding under Section 138 of N.I. Act.

32. The Apex Court in *B.S.I. Ltd. and Another vs. Gift Holdings Pvt. Ltd. and Another*, 2000 SCC (Cri) 538, interpreted the word 'Suit' while



deciding maintainability of a proceeding under Section 138 of NI Act in the context of ban imposed by the Sick Industrial Companies (Special Provisions) Act. It provides that no Suit for Recovery of Money or Enforcement of any security against the Industry, Company or Guarantee in respect of any loan or advance granted to the Industrial Company shall lie if in respect of the Industrial Company, an inquiry under Section 16 is pending or any scheme referred to under Section 17, is under preparation or consideration. The Court observed that the word '*Suit*' envisaged in Section 22(1) cannot be stretched to criminal prosecution as it is neither for recovery of money nor for enforcement of any security, etc. Section 138 of NI Act is a penal provision for commission of an offence which entails conviction and sentence on proof of the guilt in duly conducted criminal proceedings. Once the offence under Section 138 of NI Act is completed, the prosecution initiated is not for recovery of the amount covered by the Cheque, but for bringing the offender to penal liability.

33. The registration or non-registration of the Partnership Firm would have no bearing insofar as Section 141 of NI Act is concerned. The same has been held by the Karnataka High Court in the case of Gowri Containers vs. S C Shetty, ILR 2007 Kar 4586.

34. The Kerala High Court in Abdul Gafoor vs. Abdurahiman, 1999 (4) Crimes 98, held that Section 138 is not a Suit and the bar of Section 69(2) of the Partnership Act would not operate in such cases. It was further observed that the effect of non-registration of a Partnership Firm, is applicable only to the cases involving civil rights and has no application to criminal cases.



35. *Therefore, the contention raised on behalf of the Petitioner that the Complaint under Section 138 of NI Act was not maintainable as the Partnership Firm was unregistered, is not tenable in law.*

36. *The second question which arises for determination is: whether a Partnership Firm is a legal entity, which can sue or be sued in its own name.*

37. The Respondent No. 3/M/s Jagat Overseas was a Partnership Firm, in discharge of whose liabilities, the Cheque had been issued under the signatures of Respondent No. 4/Sant Lal Agarwal. It is not in dispute that the Complaint under S.138 NI Act was filed against the Respondent No. 3/M/s Jagat Overseas and the two Partners.

38. Section 141 of N.I. Act provides that where offences are committed by the Company, *then every person at the time of offence committed was in charge of and was responsible to the Company for the conduct of its business as well as the Company shall be deemed to be guilty of the offence.*

39. Explanation to Section 141 reads as under: -

“Explanation.—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

40. Section 141 of N.I. Act read with Explanation, therefore, makes it abundantly clear that when an offence is committed by a Company or a Firm, every member who is responsible and in charge of the affairs of the Company/Firm is guilty of the offence committed under Section 138 of



NI Act.

41. The difficulty arose when the learned Metropolitan Magistrate while framing a Notice under Section 251 of Cr.P.C., 1973 on 07.03.2018, observed *that the Partnership Firm is not a separate entity but it is only a compendium of persons, and did not frame a Notice against the Partnership Firm, but only against Respondent No. 4/Sant Lal Agarwal and the Petitioner/Satish Kumar Pawa separately by describing them as the partner of the Respondent No. 3/M/s Jagat Overseas.*

42. Thus, the Notice under Section 251 N.I. Act was framed on 18.04.2018 only against the two partners and not the Partnership Firm, which has not been challenged by either Party.

43. The Supreme Court in Aneeta Hada vs M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795, after referring to judgments in Iridium India Telecom Ltd. v. Motorola Inc and Ors., 2004 (1) BOM CR 479 and Standard Chartered Bank and others v. Directorate of Enforcement and others, AIR 2006 SC 1301, has observed that “*the Company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a Company commits an offence, then certain categories of persons in charge as well as the Company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.*”

44. The Apex Court further held that “*for maintaining the prosecution*



under Section 141 of the Act, arraigning of a company as an accused is imperative.”

45. The relevant paras of the judgment are reproduced as under: -

“[1] In Criminal Appeal Nos. 838 of 2008 and 842 of 2008, the common proposition of law that has emerged for consideration is whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity 'the Act') without the company being arraigned as an accused. Be it noted, these two appeals were initially heard by a two-Judge Bench and there was difference of opinion between the two learned Judges in the interpretation of Sections 138 and 141 of the Act and, therefore, the matter has been placed before us.

xxx xxx xxx

[53] It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

xxx xxx xxx

[58] Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section 8 make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is



recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

[59] In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352], does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1] is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries [AIR 1988 Supreme Court 1128] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

46. The same was reiterated by the Apex Court in Anil Gupta vs Star India Pvt. Ltd., 2014 (10) SCC 373, Himanshu vs B. Shivamurthy & Anr., (2019) 3 SCC 797, and recently in Bijoy Kumar Moni vs Paresh Manna & Anr., 2024 INSC 1024.

47. In light of the aforesaid observations, it is settled that in the absence of Company being arraigned as an accused, ***the Directors cannot be held liable for the offence committed by a company.***

48. Since the Notice under S.251 Cr.P.C. has not been framed against the Partnership Firm, this itself is a sufficient ground for discharge of the Petitioner.

49. The ***Third aspect*** for consideration is: ***Whether compounding of Offence by one Partner would result in complete discharge of the***



Liability of the Partnership Firm against all the Partners?

50. The *main contention* raised on behalf of the Petitioner is that the Partnership Firm defines the group of persons who form a Partnership Firm and the liability of the partners is joint and several and thus, compounding done by one partner for the liability of the Partnership Firm, would result in compounding of the entire case and cannot be apportioned to the Partner who was not a party to the compromise, by leaving his liability to the extent of his share in the Partnership Firm.

51. Pertinently, in the present case, one partner, the Respondent No. 4/Sant Lal Agarwal has compromised the matter with the Complainant *vide* Mediated Settlement Agreement dated 17.01.2019, wherein the Respondent No. 4/Sant Lal Agarwal, being equal partner of Respondent No. 3/M/s Jagat Overseas, the Partnership Firm, agreed to pay a sum of Rs. 25,00,000/- which is half of the dishonored cheque amount, to the Complainant “*towards full and final settlement of all disputes/claims arising out of instant complaint case against him*”. The said Compromise has been accepted by the learned Metropolitan Magistrate *vide* Order dated 02.07.2019 and the case has been directed to be continued against the Petitioner/Satish Kumar Pawa.

52. The question is *whether such partial compounding by one partner for the liabilities of the Partnership Firm, would result in total discharge of all liabilities or it can be apportioned in the manner it was done by the Respondent No. 4/Sant Lal Agarwal and the Complainant.*

53. Section 25 of the Partnership Act provides that every partner is liable, jointly with all the other partners and also severally, for all acts of



the Firm done while he is a partner. It reads as under:

“25. Liability of a partner for acts of the firm: -

Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.”

54. The Firm is not a legal entity; it is a collective or compendious name for all the partners. In other words, a Firm does not have any existence away from its partners, though by virtue of S.141 NI Act, it can be sued in its name. A Decree in favour of or against a Firm has the same effect as a Decree in favour of or against the partners. When the Firm incurs a liability, it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the Firm. Therefore, *the liability of the partners is joint and several.*

55. In Ashutosh vs State of Rajasthan & Ors., AIR 2005 SC 3434, it had been observed by the Apex Court that it is open to a creditor of the Firm to recover the debt from any one or more of the partners. Each partner shall be liable as if the debt of the Firm has been incurred on his personal liability.

56. *Therefore, when there is a compromise by one partner, it has to be for and on behalf of the Partnership Firm and there cannot be any partial settlement with one partner, as has been done in the present case.*

57. **The Complainant has sought to justify partial compounding and the withdrawal of the Complaint qua Respondent No. 4 under Section 257 of the Cr.P.C. which empowers withdrawal of Complaint against one or more accused persons.**



58. Sections 257 of Cr.P.C. reads as under:

“257. Withdrawal of complaint —

*If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, **against all or any of them**, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.”*

59. Though, Section 257 empowers a Complainant to withdraw the case on sufficient grounds against ‘all or any of the accused persons’, but it has to be understood in the right perspective. As already discussed above, the liability was that of the Partnership Firm, against whom, in the first instance, the Notice under Section 251 of Cr.P.C. has not been framed. Furthermore, as already held above, the liability was that of the Partnership Firm for which both Respondent No. 4/Sant Lal Aggarwal and the Petitioner/Satish Kumar Pawa were jointly and severally liable for the liability incurred by the Firm. The Settlement with one partner could not have been apportioned in the manner it has been done in the present case.

60. Consequently, when the Complaint is withdrawn under Section 257 by the Complainant as against Respondent No. 4/Sant Lal Aggarwal, the same is essentially withdrawn against the Partnership Firm, which is originally liable for the debt owed to the complainant.

61. In view of Section 25 of the Partnership Act, the Partners, accused persons herein, are jointly and severally liable for the acts of the



Partnership Firm/M/s Jagat Overseas.

62. In the present case, both the partners, namely, Petitioner/Satish Kumar Pawa and the Respondent No. 4/Sant Lal Agarwal, were jointly and severally responsible for the liability incurred by the Partnership Firm, meaning thereby that each is liable for the entire liability individually as well as jointly. The partners may have agreed to be entitled to the share profit & loss in a particular ratio, but *their legal liability towards the third person is joint and several and there can be no apportionment.*

63. It is pertinent to note that in the Mediated Settlement Agreement dated 17.01.2019 itself, it has been noted that the Compromise is towards all the existing liabilities of the Partnership Firm which also acknowledges that the payment made by the Respondent No. 4/Sant Lal Agarwal in discharge of *his liabilities* of the Partnership Firm. Relevant part of Settlement Agreement reads as under:

“1. It is agreed between the parties that respondent no.2/Santlal Agarwal being an equal partner of respondent no. 1 firm, shall pay a sum of Rs. 25,00,000(Rupees Twenty-Five Lakh only) which is half of the total dishonoured cheque amount, to the complainant, towards full and final settlement of all disputes/claims arising out of instant complaint case against him.

2. It is further agreed between the parties that respondent no.2/Santlal Agarwal shall pay the aforesaid settled amount to the complainant in five equal monthly instalments of Rs. 5,00,000/-(Rupees Five Lakh only) each, by way of demand draft, before the referral court on 21st day of every English calendar month. The instalments would commence from January, 2019 itself. In case of holiday, the payment shall be made on the next working day.



3. It is agreed between the parties that in case of default, the respondent no.2 shall pay a sum of Rs. 15,000/- on one default and in case of second default, the settlement shall be revoked.

4. It is agreed between the parties that after realization of the aforesaid settled amount, the complainant shall be left with no claim/dues/ criminal or civil liability whatsoever against the respondent no.2/Santlal Agarwal qua the instant complaint case and he shall withdraw his claim against respondent no.2 accordingly. The complainant shall not recover the civil liability and criminal liability from the respondent no.2 in the present case and he shall also not file any claim against respondent no.2 with regard to the instant matter.

5. Both the parties have agreed on each and every term recorded in the settlement agreement, after carefully reading over and fully understanding and appreciating the contents, scope and effect thereof as also the consequences of the breach thereof.

6. The terms have been settled between the parties of their own free will, volition and consent and without there being any undue pressure, coercion, influence, misrepresentation or mistake (both of law and fact), in any form, whatsoever, and the settlement agreement has correctly recorded the said agreed terms.

7. Both the parties undertake that they will abide by and be bound by the agreed terms/stipulations of the settlement agreement.”

64. The liability of Sh. Sant Lal was not limited to his 50% as has been erroneously assumed, but is towards the entire liability. Once this compounding has been accepted by the Complainant, the necessary implication shall be that it is for and on behalf of the Partnership Firm.

65. Therefore, once the matter stands compromised for whatever the amount, the offence is compounded towards all the existing liabilities of



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the Partnership Firm; nothing survives in the Complaint which has to be necessarily disposed of as compromised against the second partner/Petitioner as well. Thus, Section 257 of Cr.P.C. do not come to the rescue of the Complainant/Respondent No. 2 in the case herein.

Relief: -

66. In view of above discussion, the present Petition is allowed and the Complaint Case No. 10445/2016 under Section 138 of N.I. Act filed by the Respondent No. 2 is quashed/disposed of as compounded and the Petitioner/Satish Kumar Pawa is hereby, acquitted.

67. Accordingly, the present Petition is disposed of along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

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