2025:DHC:4159

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

Date of decision: 15th May, 2025

\+ **CRL.M.C. 5779/2018, CRL.M.A. 47441/2018**

PRABHAKIRAN JAIN

W/o Shri P.K. Jain
R/o Panna Bhawan,
2 Ansari Road, Darya Ganj,
New Delhi- 110002 .....Petitioner

Through: Mr. Rishabh Jain, Advocate.

versus

M/S S. R. JEWELS PVT LTD
thr. its Director Vijay Gupta
Having its Registered Office at
A-148, Defence Colony
New Delhi – 110024 .....Respondent No. 1

STATE OF N.C.T. OF DELHI
Through its Standing Counsel
(DELHI HIGH COURT) .....Respondent No. 2

Through: Mr. J.P. Singh, Advocate for R1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U G D M E N T ***(oral)***

1. Petition under Section 482 Criminal Procedure Code, 1973 has been filed seeking quashing of Criminal Complaint No. CC 932/2014 under Section 138 of Negotiable Instruments Act, 1881 pending before Ld. M.M. Karkardooma.

2. ***Briefly stated,*** the Complainant and Accused No. 1/*M/s Complete Infotech Pvt. Ltd.* are Companies incorporated under the Companies Act. Accused No. 2/Sh. Pawan Kumar Jaia & Accused No.3/Mrs. Prabhakiran Jain are stated to be Directors of Accused No. 1 Company and in charge of its day-to-day affairs.

3. The Accused persons approached the Complainant for grant of loan of Rs. 12,00,000/-, which was granted through three Cheques bearing No. 512514 dated 04.03.2004 for Rs.6,00,000/-, 512516 & 512517dated 11.03.2004 each for Rs. 3,00,000/-. The cheques were encashed and money was deposited in Account no. 689 of the Accused No.1 Company. The Accused promised refund within 6 months and on failure to do the same, undertook to create mortgage in respect of industrial property bearing No. 46, Block-B, Sector-5, Noida, which was registered with the Registrar of Companies on 10.09.2004 and the same is still continuing.

4. In discharge of this liability, accused persons issued two post-dated Cheques No. 995317-995318 dated 27.04.2004 for Rs. 6,00,000/- each, under the signatures of Accused No. 2/Sh. Pawan Kumar Jaia, but delivered by both the Accused No. 2 & 3.

5. The cheques on presentation, were dishonoured on account of *"insufficient funds" vide* Memo dated 27.01.2004. Despite service of Notice dated 18.02.2005 upon the accused persons, they failed to pay the cheques amount. Consequently, two Complaint cases No. 685/1/2005 & 284/1/2005were filed in respect of the two cheques.

6. The accused persons agreed to settle the Account with the Complainant, for a sum of Rs.16,50,000/-. Pursuant to settlement, two

cheques were handed over, out of which one cheque/DD for Rs.13,00,000/- has been encashed but the second post-dated cheque No. 352736 dated 05.02.2006 for Rs.3,50,000/- on presentation, was returned *vide* Memo dated 19.04.2006 with remarks ***"exceeds arrangement".***

7. The Complainant served Notice dated 18.05.2006 upon accused persons, but despite service they failed to pay the cheque amount. Consequently, third Complainant Case No. 932/2014 (renumbered) was filed on 03.07.2006.

8. The Notice under Section 251 Cr.P.C. was framed on 13.11.2007. Aggrieved, the Petitioner/Accused No. 3/Mrs. Prabhakiran Jain has preferred the present Petition.

9. The Petitioner/Prabhakiran Jain has sought to argue that the Cheque, is respect of which, present Complaint has been filed, was not in discharge of any legal liability and thus, is not maintainable. Reliance has been placed on *Lalit Kumar Sharma vs. State of U.P.,* (2008) 5 SCC 638.

10. ***It is submitted by the learned counsel for the Petitioner*** that continuance of these proceedings in nothing but an abuse of process of law and leads to legal anomaly, where all three Complaints, two in relation to the cheques issued in the original and third in respect of the Cheque issued pursuant to the settlement in regard to first two Cheques, for which separate Complaints are already pending. If there was conviction in all three Cases, then same would amount to ***double jeopardy*** as there is only one legally enforceable debt.

11. ***The learned counsel for the Respondent/ Complainant,*** on the other hand, has argued that there is a legally enforceable debt in so much as

despite entering into a Settlement for which these cheques had been given, it has got dishonoured. It is further submitted that in *Arun Kumar vs. Anita Mishra*, (2020) 16 SCC 118, the Apex Court has distinguished *Lalit Kumar Sharma* (supra) which is not applicable to the facts of the present case. Thus, the present petition is liable to be dismissed.

12. **Submissions Heard and Record Perused.**

13. In the present case, interesting facts have emerged in so much as after the Settlement was recorded on 14.12.2005 in the first two Complaints, the Accused persons had paid a cheque/DD for Rs.13,00,000/- out of the agreed amount of Rs.16,50,000/-, which was encashed Complainant. It is only the cheque of Rs.3,50,000/- for balance amount that got dishonoured which is the subject matter of the third Complaint under Section 138 N.I. Act.

14. The ***first aspect which needs consideration*** is what is the fate of the mediated Settlement on the case in which it is effected and whether after Settlement, the original Complaint Case can be continued in case of default. Once, the Settlement is endorsed and acted upon by the parties, the Complaint gets subsumed in the Settlement, as has been held in the case of *Gimpex Private Limited vs. Manoj Goel* 2021 SCC OnLine SC 925, wherein it is observed as under :

> *"38. When a complainant party enters into a compromise agreement.... 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.***"

15. The consequences of non-compliance of the Settlement was considered extensively in <u>*Dayawati vs. Yogesh Kumar Gosain*,</u> (2017) 243 DLT 117, which gives the answer to the further course of action in case of breached Mediated Settlement, wherein it was observed as follows:

> *"Question IV: If the settlement in Mediation is not complied with – is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree? In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed:*
> *(i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate* ***would pass an order under Section 431 read with Section 421 of the Cr.P.C. to recover the amount*** *agreed to be paid by the accused in the same manner as a fine would be recovered.*
> *(ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under* ***Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.***"

16. Thus, the two remedies available to the Complainant in case a mediated Settlement is violated, are:

> *(i) to file an Application under Contempt of Courts Act; and*
> *(ii) to seek the execution of the mediated Settlement by resorting to Section 431 read with Section 421 of Cr.P.C.*

17. Coordinate Bench of this Court in judgment of ***Raja Arora & Anr. vs. Ms. Meera Arun & Ors.,*** CRL. M.C. 3333/2021 dated 03.09.2022, held as

under:

> *"the judgment of <u>Dayawati</u> (supra) wherein it says after the mediation settlement the entire amount, be it outstanding in some other Court can be realised by the Court which has accepted the settlement and **it may proceed for recovery under Section 431/421 Cr.P.C**".*

18. This court has decided similar issue in the cases of *<u>Anil Jain vs. State (NCT of Delhi)</u>* in Crl.M.C. 3892/2022 decided on 09.08.2024, *<u>Manohar Lal vs The State (Govt. of NCT of Delhi)</u>* in Crl. M.C. 2931/2018 decided on 03.02.2025, and recently in *<u>Devi Sharan Tyagi vs Raju Malhotra</u>*, Crl.A. 386/2025 decided 30.04.2025.

19. In the case of *<u>Lalit Kumar Sharma (supra)</u>*, identical facts as in hand, were involved. The subsequent cheque of Rs. 3,50,000/- was issued pursuant to the settlement and not in discharge of the debt or liability of the Company of which the appellants were the Director. It was observed that there was only one transaction between the accused Company and the complainant. Despite the Settlement, the First Complaint was continued in which the accused Company/Directors were punished and the fine amount was paid. In the circumstances, it was held that the question of entertaining the second complaint did not arise.

20. The Complainant has relied on the case of *<u>Arun Kumar</u>* (supra) to submit that the case of *<u>Lalit Kumar Sharma</u>* (supra) is distinguishable. In this case, after the Accused was convicted under S.138 NI Act, the Parties entered into a Settlement in Lok Adalat and the cheque was issued which got dishonoured and second Complaint was filed. In this backdrop, it was held that Settlement in Lok Adalat is like a Civil Decree which is a legally enforceable debt, for which the Complaint under S.138 NI Act can be filed

afresh.

21. However, the facts in this case are distinguishable. In the present case the legally enforceable Debt is yet to be ascertained in the First two Complaints, and no fresh Complaint for the same debt under consideration, is maintainable. If any other interpretation is given, it would result in an anomalous situation where the Petitioner would get convicted for the same debt twice.

22. Another, interesting aspect is that the Settlement dated 14.12.2005 wherein Rs.16,50,000/- were agreed to be received in respect of the two Cheques, was duly acted upon and the Complainant has already received Rs.13,00,000/- leaving a balance of Rs.3,50,000/- in respect of which the issued Cheque got dishonoured. If all the three Complaints are allowed to continue, it would actually tantamount to being tried for the same offence twice. In the light of the case of *Dayawati* (supra), actually the two Complaints got subsumed into the Settlement which was acted upon. The option with the Complainant is to either seek Execution under Section 431 read with Section 421 Cr.P.C. or to initiate the proceedings under Section 2(b) Contempt of Courts Act, 1971. There could not have been any subsequent trial on the Complaint in which the parties had arrived at the Settlement.

23. However, the Complainant has sought to disregard and overlooked the Settlement and continued the first two Complaints, then the only conclusion that can be drawn is that the Settlement has become non-est and no liability can be said to have accrued under it.

24. In view of the above discussion, the third Complaint CC No.

932/2014 does not disclose any legally recoverable Debt. The Complaint and all the consequent proceedings emanating therefrom, is hereby quashed and the Petitioner is hereby, discharged. In the circumstances, no observations are made in regard to the amount of Rs. 13,00,000/- already received by the Complainant, and the Petitioner/ Accused persons are at liberty to pursue the appropriate remedy under Law.

25. In view of the above discussion, the Petition is accordingly, disposed of along with pending Application(s), if any.

NEENA BANSAL KRISHNA, J

MAY 15, 2025/*va*