M/S Gimpex Private Limited vs Manoj Goel on 8 October, 2021

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Bench: B.V. Nagarathna, Vikram Nath, Dhananjaya Y Chandrachud

Repo

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1068 of 2021
(Arising out of SLP (Criminal) No. 6564 of 2019)

M/s Gimpex Private Limited ... Appellant

Versus

Manoj Goel ... Respondent

With Criminal Appeal Nos. 1069-1075 of 2021 (Arising out of SLP (Criminal) Nos. 7632-7638 of 2019) JUDGMENT Dr. Dhananjaya Y. Chandrachud, J A Factual Background .....3 B Submissions of parties .....12 C Analysis .....15 C.1 Parallel prosecutions .....15 C.2 Liability arising from the settlement agreement .....33 D Conclusion .....40 PART A A Factual Background 1 This batch of appeals has arisen from a judgment dated 10 April 2019 of a Single Judge of the High Court of Judicature at Madras by which proceedings in a complaint 1 under Section 138 of the Negotiable Instruments Act 1881 2, pending on the file of the Seventh Metropolitan Magistrate's Court at Chennai were quashed. The jurisdiction of the Single Judge was invoked under Section 482 of the Code of Criminal Procedure 1973 3.

2 On 17 and 27 April 2012, the appellant entered into three High Seas Sale Agreements 4 with Aanchal Cement Limited5. On the request of ACL, the appellant paid an amount of Rs. 6.96 crores (Rs. 6,96,74,666/-) as customs duty and Rs. 8.04 crores (Rs. 8,04,12,495/-) as wharfage charges in order to clear the goods on behalf of ACL which is alleged to have promised to repay the amount

with interest. It has been alleged that though the appellant supplied the goods, ACL failed to make payments. On 6 August 2012, ACL issued 18 cheques dated 8 August 2012, each in the amount of Rs. 50 lakhs, for a total value of Rs. 9 crores in favour of the appellant in part payment of the outstanding liability. On 21 August 2012, the 18 cheques were dishonoured upon presentation with an endorsement: "payments stopped by drawer"/ "insufficient funds". A complaint was lodged by the appellant on 10 September 2012, with the Commissioner of Police, Egmore, Chennai, against ACL "NI Act" "CrPC" "HSSA" "ACL" PART A and its directors for offences under Sections 409 and 506(1) of the Indian Penal Code 1860 6, which was registered as an FIR in Central Crime Branch on 1 February 2013 as Crime No. 21 of 2013. Between 22 September 2012 and 5 October 2012, the appellant issued legal notices under Section 138 of the NI Act to ACL and its directors - Sitaram Goel, Manoj Goel (the respondent) and Mukesh Goel in respect of the dishonor of the 18 cheques.

3 On 22 October 2012 and 6 November 2012, the appellant filed criminal complaints 7 under Section 138 of the NI Act, in respect of the dishonour of the cheques of the value of Rs. 9 crores. This is the first set of complaints filed by the appellant.

4 In 2013, Sitaram Goel filed petitions 8 under Section 482 of the CrPC for quashing the complaints qua him. On 3 March 2013, Mukesh Goel, a director of ACL was arrested by the Central Crime Branch. A bail application was filed by Mukesh Goel on 5 March 2013.

5 During the pendency of the bail application, ACL approached the appellant to settle the matter and arrive at a compromise. On 12 March 2013, the appellant and ACL entered into a deed of compromise containing, inter alia, the following stipulations:

> "1. Based on the above agreement the "PARTY OF THE FIRST PART" hand over DD No: 271351, dt: 11/03/2013 for Rs. 3,00,00,000/- (Rupees Three Crore Only) drawn "IPC" CC Nos.3326-3329 of 2012 and CC Nos.99-101 of 2013 Crl. OP Nos. 22873 to 22878 of 2016 and Crl. M.P. Nos.10687 to 10698 of 2016 PART A on The Kapur Vysya Bank Limited, in favour of the "PARTY OF THE SECOND PART", to the PARTY OF THE SECOND PART" on 11/03/2013
>
> 2. On receipt of Rs. 3 crore mentioned above, the "PARTY OF THE SECOND PART" shall say no objection for the bail application filed by the "PARTY OF THE FIRST PART"
>
> 3. The "PARTY OF THE FIRST PART" agrees and undertake to pay the balance amount of Rs. 7 crore within 3 months in 3 equal instalments of Rs. 2,33,33,333/-

(Rupees Two Crore Thirty Three Lakh Thirty Three Thousand Three Hundred and Thirty Three Only) every month to the "PARTY OF THE SECOND PART". The monthly instalment shall be paid on or before 11th day of every month i.e. 11/04/2013, 11/05/2013 and 11/06/2013.

4. The "PARTY OF THE FIRST PART" agrees and undertake to pay the monthly instalment of Rs.

2,33,33,333/- equally divided in three parts and Sri. Sitram Goel, Sri. Manoj Goel and M/s Aanchal collection Limited would issue cheques in faovour of the "PARTY OF THE SECOND PART" towards the compliance of the settlement.

5. The "PARTY OF THE FIRST PART" handed over following cheques to the "PARTY OF THE SECOND PART" as compliance of the assurance and undertaking given by the "PARTY OF THE FIRST PART" [...]

6. The "PARTY OF THE FIRST PART" after consultation with the directions of M/s. Aanchal Cement Limited (Formerly M/s Kalika Cement Private Limited) and M/s. Aanchal Collection Limited, which is also family business and sister concern of "PARTY OF THE FIRST PART" and Sri. Sitaram Goel, has arrived at this settlement and signing this compromise deed. Any default or non commitment of the conditions set out in this compromise deed would amount to cheating and fraud. The "PARTY OF THE FIRST PART" has issued the cheque of M/s Aanchal Collection Limited, towards clearance of legal debt to the "Party of the Second Part".

7. The "PARTY OF THE FIRST PART" agrees and undertakes that if any of the conditions agreed in this PART A compromise deed is not honoured that would amount to cheating, fraud, breach of trust, etc. and the bail granted to Sri. Mukesh Goel shall be deemed to have cancelled automatically and the "PARTY OF THHE SECOND PART" is also entitled to cancel the bail and also entitle to file a fresh criminal complaint besides NI Act, against the drawer of cheques and also against other directors of the "PARTY OF THE FIRST PART" and M/s Aanchal Collection Limited".

8. The "PARTY OF THE SECOND PART", on receipt of Rs.

5,33,33,333/- which would be completed after honouring all the cheques dt: 11/04/2013, shall withdraw the Garnishee application filed in Arbitration proceedings filed against the "PARTY OF THE FIRST PART" in A. No. 312/2013 and ANo. 313/2013 in O.A. No. 42/2013, pending before the Hon'ble High Court of Madras.

9. After payment of the entire settlement amount of Rs. 10 crore by the "PARTY OF THE FIRST PART" to the "PARTY OF THE SECOND PART", the PARTY OF THE SECOND PART" shall withdraw all the criminal complaints, suits, arbitration proceedings, 138 proceedings filed in C.C. No. 3326-3329/2012 & CC No. 99-101/2013, pending before VIIth, MM, George Town, Chennai against the "PARTY OF THE FIRST PART". It is also assured and agreed by the "PARTY OF THE FIRST PART" shall withdraw the case filed, before the Kalkata City Civil Court against the "PARTY OF THE SECOND PART" in O.S. No. 1615/2012.

10. It is agreed that on payment of Rs. 10 crore by the "PARTY OF THE FIRST PART" either party shall have no claim against each other on the issue of purchase of Clinker purchased under the HSS agreements dt:

> 17/04/2013, 27/04/2013 and 27/04/2013 and all the cases filed against each other shall be withdrawn." 6 On the basis of the above compromise, Mukesh Goel was

granted bail.

Sitaram Goel and the respondent were granted anticipatory bail by the Metropolitan Magistrate on 26 March 2013 and 3 April 2013 on the basis of the deed of compromise.

PART A 7 On 8 April 2013, a suit 9 was instituted by ACL and one of its directors before the High Court of Judicature at Madras challenging the deed of compromise as illegal, null and void, and for return of the cheques issued to the appellant pursuant to it. Initially, an interim injunction was issued and the cheques were replaced. By an order dated 2 December 2013, the interim application was rejected and the claim of ACL that the deed of compromise was obtained by force, fraud and coercion was not found to be worthy of acceptance. An appeal against the judgment of the Single Judge was dismissed as withdrawn on 12 December 2014. 8 On 14 December 2015, this Court stayed further proceedings arising out of the FIR Crime No. 21/2013 (which had been registered with the Central Crime Branch) for offences punishable under Section 409 and 506(1) of the IPC. 9 On 15 November 2016, the Madras High Court dismissed the proceedings initiated by Sitaram Goel for quashing of the first set of complaints under Section 138 of the NI Act against him.

10 The cheques issued in pursuance of the deed of compromise dated 12 March 2013 having been dishonoured, a second complaint 10 was instituted on 16 February 2017 by the appellant under Section 138 of the NI Act before the Seventh Metropolitan Magistrate (the complaint was initially filed before the CMM Kolkata in 2015 and was subsequently transferred to Chennai on 10 March 2015). This is the second complaint filed by the appellant against ACL under Section 138 of the NI Act. PART A 11 On 10 March 2017, ACL and its directors (Manoj Goel and Mukesh Goel) instituted proceedings 11 before the Madras High Court under Section 482 of the CrPC to quash the proceedings pending against them under Section 138 of the NI Act in the first set of complaints. On 19 August 2017, ACL and its directors instituted another proceeding12 before the Madras High Court under Sections 482 CrPC to quash the proceedings initiated under Section 138 of the NI Act in the second complaint. The latter was disposed of by the High Court by quashing the proceedings as against ACL, Manoj Goel, and Vijay Srivastav, with the complainant agreeing to proceed with the trial as against the respondent who was the signatory of the cheques in question.

12 The High Court also disposed of the proceedings which were instituted on 10 March 2017 and refused to quash the first set of complaints. The orders of the High Court were challenged by ACL in special leave petitions 13. By its order dated 18 May 2018, this Court granted liberty to ACL to approach the High Court in respect of the specific plea that the compromise deed (and the 15 cheques issued pursuant to it) was entered into under coercion. The order of this Court reads as follows:

> “Delay condoned.
>
> It is argued by Mr. K.V. Viswanathan, learned senior counsel appearing for the petitioners, that the petitioners have sought quashing of the proceedings on altogether different grounds. He has referred to Ground 'D' of the petition (Pg. 67 of the paper book) wherein it is stated that under coercion deed of compromise was

> signed between the petitioners and the Crl. O.P. No. 5494-5500 of 2017 and Crl. M.P. Nos. 5244 to 5250, 4094, 4096, 4098, 4100, 4102, 4104 and 4106 of 2017 Crl. O.P. No. 17255 of 2017 and Crl. M.P. Nos 10587 and 10588 of 2017 SLP (Criminal) Diary No.17687 and 17257 of 2018 PART A respondent and pursuant to which the petitioners had issued 15 fresh cheques in full settlement of all claims of the respondent. This aspect, he submits has not been looked into by the High Court while passing the common order. The petitioners are granted liberty to approach the High Court again to take up this plea and we expect the High Court to deal with the issue on its own merits.

We make it clear that this Court has not expressed any opinion on the merits of the issue and it is for the High Court to take its own view.

With the aforesaid observations the special leave petition is disposed of.

Pending application(s), if any, stands disposed of accordingly." 13 On 14 June 2018, the second complaint was transferred to be tried along with the earlier batch of 7 cases, the first set of complaints. Pursuant to the order of this Court, on 19 July 2018, ACL instituted proceedings 14 under Section 482 of the CrPC for quashing the first complaint under Section 138 of the NI Act. 14 By an order dated 6 August 2018, in the special leave petition 15 instituted before this Court against the order of the High Court dated 24 November 2017, liberty was granted to the respondent, Manoj Goel, in the following terms to raise the issue of the simultaneous prosecution of two sets of cases:

> "Delay condoned.
>
> It is argued by Mr. R. Basant, learned senior counsel appearing for the petitioner, that the crux of the contention raised by the petitioner is that two sets of prosecutions under the Negotiable Instruments Act cannot simultaneously lie. Admittedly, the second set of cheques on which the present prosecutions are initiated were issued on the basis of a Deed Crl.O.P Nos 21731-21737 of 2018 against C.C. No. 3326-3329 of 2012 and C.C. No. 99-101 of 2013 SLP (Criminal) Diary No. 17257 of 2018 PART A of Compromise for the discharge of the same liability for which the earlier 18 cheques each of Rs. 50 lacs were issued. The counsel points out that in respect of the prosecution relating to earlier cheques, this Court had vide order dated 18.05.2018 granted leave to the petitioner to reagitate the contention before the High Court that two separate prosecutions under Section 138 of the Negotiable Instruments Act in respect of two sets of cheques – both issued for the discharge of the same liability cannot simultaneously stand.

The petitioner is granted liberty to approach the High Court again to take up this plea and we expect the High Court to deal with the issue on its own merits.

We make it clear that this Court has not expressed any opinion on the merits of the issue and it is for the High Court to take its own view.

With the aforesaid observations the Special Leave Petition is disposed of.

Pending application(s), if any, stands disposed of accordingly." 15 On 18 September 2018, the respondent instituted proceedings16 before the Madras High Court to quash the proceedings pending against him under Section 138 of the NI Act in the second complaint. By its judgment dated 10 April 2019, the High Court disposed of the petitions filed under Section 482 of the CrPC in respect of both the first and the second complaints. The High Court:

> (i) Dismissed the proceedings instituted by ACL and its directors against the first complaint and directed the Fast Track Court No. IV George Town, Chennai to complete the trial in the first set of complaints within three months;

PART A

(ii) Allowed the proceedings instituted by the respondent, Manoj Goel and quashed the proceedings in the second complaint pending on the file of the Seventh Metropolitan Magistrate.

16 On 3 June 2019, ACL filed an application 17 seeking review together with the clarification of the findings to the effect that they shall not influence the trial of the criminal complaint. The High Court passed an order thereon on 8 July 2019. 17 The judgment of the High Court dated 10 April 2019 has given rise to the special leave petitions before us. A special leave petition 18 was instituted by the appellant before this Court against the quashing the second criminal complaint by the High Court. On the other hand, ACL filed a special leave petition 19 against the judgment of the High Court allowing the proceedings under the first complaint to continue. Both the special leave petitions were tagged and heard together. 18 The Single Judge, while allowing the petition under Section 482 and quashing the proceedings in the second complaint has provided the following reasons:

> "19. […] without going into the validity of the deed of compromise the cheques issued on the deed of compromise culminated in C.C. No. 389 of 2017. Though part of compromise deed executed by the parties, the complaint initiated on the cheques issued on the deed of compromise cannot be sustained. Since originally the petitioners issued the first set of cheques on their liability of payment towards the three HSS Agreements is still pending as per the proceedings under the Negotiable Instruments Act. Therefore the second set of cheques issued only on the basis of deed of compromise and those are not issued for any liability. Also Crl MP Nos. 8157, 8158, 8163, 8165, 8167, 8168 of 2019 in Crl OP No. 21731-37 of 2018 SLP (Criminal) No. 6564 of 2019 SLP (Criminal) Nos. 7632-7638 of 2019 PART B when the very deed of compromise itself is challenged in the suit, the cheques issued on the said deed of compromise cannot be construed as those cheques were issued for discharging their liability."

19 In the above extract, the High Court has held that since the criminal complaints in respect of the dishonor of the first set of cheques issued against the liability under the HSSA are still pending, the second set of cheques issued on the basis of the deed of compromise "are not issued for any

liability". The High Court has also held that since the validity of the deed of compromise is challenged in the suit pending before the High Court, the cheques issued on the basis of the deed of compromise cannot be construed towards the discharge of liability. In this batch of two appeals, the appeal by Gimpex Private Limited (appellant) assails the decision of the High Court to quash the second complaint under Section 138 on the ground that the cheques which were issued in pursuance of the deed of compromise could not be construed to be in discharge of a liability. In the companion appeal, which has been instituted by ACL and its directors (Manoj Goel and Mukesh Goel), the order of the High Court allowing the first complaint in respect of the first set of cheques to continue has been assailed.

B Submissions of parties

20 Mr V Giri, learned Senior Counsel appearing on behalf of the appellants

(Gimpex Private Limited) with Ms Liz Mathew has urged the following submissions:

> (i) The offence under Section 138 of the NI Act, 1881 is complete once its ingredients are fulfilled;

PART B

(ii) Once the offence is complete and a prosecution is launched, it must proceed to trial and it was not open to the High court in the exercise of its jurisdiction under Section 482 CrPC to quash the prosecution on the basis of the deed of compromise which has not been implemented due to the default of the accused;

(iii) Whether a liability exists and whether the cheques (as set up in the defence) were issued as and by way of security are matters for trial;

(iv) In view of the presumption under Section 139 of the NI Act, at this stage the Court has to proceed on the basis that the cheques were issued in discharge of a legally enforceable debt;

(v) The mere pendency of a suit seeking to challenge the deed of compromise is not a ground to quash the criminal complaint given the clear distinction in law between an order of conviction and an order at an anterior stage seeking quashing of a criminal complaint; and

(vi) There is no embargo under Section 138 of the NI Act on parallel proceedings for distinct offences involving the dishonor of cheques. Both sets of criminal complaints in respect of the first set of cheques and the second set of cheques are being tried by the same court. It is not legitimately open to the accused who committed a breach of the settlement to seek a quashing of the criminal complaints. The Magistrate at the end of the trial would undoubtedly determine the nature of the sentence that should be imposed. PART B 21 On the other hand, Mr Jayant Bhushan, learned Senior Counsel has urged the following submissions.

(i) The essential issue is whether a criminal trial can go on with both sets of cheques;

(ii) The crucial ingredient of Section 138 is that a cheque must be for the discharge, in whole or in part of any debt or other liability. There cannot be a two prosecutions for the same liability;

(iii) The liability under the first set of cheques was replaced following the deed of compromise by the second set of cheques;

(iv) As a consequence of the deed of compromise there was a novated contracted between the parties;

(v) In terms of the provisions of Section 39 of the Indian Contract Act 1872 it is open to the appellant as the promisee to elect whether to repudiate the agreement or continue with its performance on breach of the agreement by the other party (respondents);

(vi) The appellant has in fact repudiated the deed of compromise by failing to withdraw the criminal complaint and the arbitral proceedings;

(vii) The appellant can in the circumstances only enforce the liability in respect of the first set of cheques as a consequence of which the criminal prosecution in respect of only the first set may proceed; and PART C

(viii) In the cross appeal, Mr Jayant Bhushan, learned Senior Counsel submitted that the principal contention of the accused is that the transaction was not as a matter of fact a sale on high seas. However, learned Senior Counsel submitted that this cannot be fairly agitated in proceedings under Section 482 CrPC and it will be appropriate if the issue is left open to be urged at the trial. 22 The rival submissions will now be considered.

C Analysis

23 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.

C.1 Parallel prosecutions

24 Section 138 of the NI Act stipulates thus:

"Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount PART C of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-- For the purposes of this section, debt of other liability means a legally enforceable debt or other liability." 25 The ingredients of the offence under Section 138 are:

(i) The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;

(ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability;

(iii) Presentation of the cheque to the bank;

(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to PART C honour the cheque or that it exceeds the amount arranged to be paid from that account;

(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and

(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

26 The ingredients of the offence were summarized in fairly similar terms in a judgment of a two judge Bench of this Court in K Bhaskaran v. Sankaran Vaidhyan Balan 20. Justice K T Thomas observed:

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice."

27 The nature of the offence under Section 138 of the NI Act is quasi-criminal in that, while it arises out of a civil wrong, the law, however, imposes a criminal penalty in the form of imprisonment or fine. The purpose of the enactment is to provide security to creditors and instil confidence in the banking system of the country. The nature of the proceedings under Section 138 of the NI Act was considered by a three judge Bench decision of this Court in P Mohanraj and Others v. Shah (1999) 7 SCC 510 PART C Brothers Ispat Private Limited 21, where Justice RF Nariman, after adverting to the precedents of this Court, observed that:

"53. A perusal of the judgment in Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act." 28 Given that the primary purpose of Section 138 of the NI Act is to ensure compensation to the complainant, the NI Act also allows for parties to enter into a compromise, both during the pendency of the complaint and even after the conviction of the accused. The decision of this Court in Meters and Instruments (P) Ltd. v. Kanchan Mehta 22 summarises the objective of allowing compounding of an offence under Section 138 of the NI Act:

> "18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court." (2021) 6 SCC 258 (2018) 1 SCC 560 PART C

29 In Prakash Gupta v. SEBI 23 a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, analysed the decision in Meters and Instruments (supra) in the context of a discussion on whether compounding of an offence requires the consent of an aggrieved party (para 78). The decision in Meters and Instruments (supra) is cited above in regard to the rationale behind compounding of offences punishable under Section 138. In Damodar S Prabhu v. Sayed Babalal 24 a three judge Bench of this Court observed that the effect of an offence under Section 138 of the NI Act is limited to two private parties involved in a commercial transaction. However, the intent of the legislature in providing a criminal sanction for dishonour of cheques is to ensure the credibility of transactions involving negotiable instruments. The Court observed:

> "4. It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a "fine which may extend to twice the amount of the cheque" serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions." (2021) SCC Online SC 485 (2010) 5 SCC 663 PART C

30 However, this Court also noted that the introduction of a criminal remedy has given rise to a worrying trend where cases under Section 138 of the NI Act are disproportionately burdening the criminal justice system. This Court observed:

> "5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakh cheque bouncing cases were pending before various courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system."

31 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. In Damodar S. Prabhu (supra) this Court had emphasised that the compensatory aspect of the remedy under Section 138 of the NI Act must be preferred and has encouraged litigants

to resolve disputes amicably. The Court observed:

> "18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of PART C cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court.
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> 19. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case.

In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

[...]

23. We are also in agreement with the learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an instalment basis to be repaid in equated monthly instalments, several cheques are taken which are dated for each monthly instalment and upon the dishonour of PART C each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 CrPC. If it is found that

such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively." 32 This concern has been reiterated recently by a Constitution Bench of this Court in Re: Expeditious Trial of Cases under Section 138 of the NI Act 1881 25, where it was observed that "5. The situation has not improved as courts continue to struggle with the humongous pendency of complaints under Section 138 of the Act. The preliminary report submitted by the learned Amici Curiae shows that as on 31.12.2019, the total number of criminal cases pending was 2.31 crores, out of which 35.16 lakh pertained to Section 138 of the Act. The reasons for the backlog of cases, according to the learned Amici Curiae, is that while there is a steady increase in the institution of complaints every year, the rate of disposal does not match the rate of institution of complaints. Delay in disposal of the complaints under Section 138 of the Act has been due to reasons which we shall deal with in this order. [...]

23. Though we have referred all the other issues which are not decided herein to the Committee appointed by this Court on 10.03.2021, it is necessary to deal with the complaints under Section 138 pending in Appellate Courts, High Courts and in this Court. We are informed by the learned Amici Curiae that cases pending at the appellate stage and before the High Courts and this Court can be settled through mediation. We request the High Courts to identify the pending revisions arising out of complaints filed under Section 138 of Suo Motu Writ Petition (Crl.) No. 2 of 2020, 16 April 2021, available at https://main.sci.gov.in/supremecourt/2020/9631/9631_2020_31_501_27616_Judgement_16-Apr-2021.pdf. PART C the Act and refer them to mediation at the earliest. The Courts before which appeals against judgments in complaints under Section 138 of the Act are pending should be directed to make an effort to settle the disputes through mediation." 33 The pendency of court proceedings under Section 138 of the NI Act and the multiplicity of complaints in which a cause of action arising from one transaction is litigated has dampened the ease of doing business in India, impacted business sentiments and hindered investments from investors. Recognising these issues, the Ministry of Finance by a notice 26 dated 8 June 2020, has sought comments regarding decriminalisation of minor offences, including Section 138 of the NI Act, to improve the business sentiment in the country. https://financialservices.gov.in/sites/default/files/Decriminalization%20-%20Public%20Comments.pdf

34 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.

35 The narration of facts would indicate that initially 18 cheques dated 8 August 2012 of a total value of Rs. 9 crores were issued by ACL in favour of the appellant (Gimpex Private Limited). The dishonour of the cheques on 21 August 2012 on the ground that the payment had been stopped by the drawer or, as the case may be, for insufficiency of funds led to the issuance of legal notices under Section 138 of the NI Act and the institution of the first criminal complaint before the Seventh Metropolitan Magistrate. It was at that stage that Mukesh Goel, a director of ACL

PART C was arrested by the Central Crime Branch on 3 March 2013, in connection with Crime No. 21/2013 which was registered for offences under Sections 409 and 506(1) of the IPC. In this backdrop, the deed of compromise was entered into on 12 March 2013. The deed of compromise envisages that:

> (i) A demand draft of Rs. 3 crores was handed over to the complainant on 11 March 2013;
>
> (ii) On receipt of the amount of Rs.3 crores, the complainant would not object to the bail application filed by Manoj Goel;
>
> (iii) Apart from the amount of Rs. 3 crores, the balance of Rs. 7 crores would be paid within three months in three equal monthly instalments each of Rs.2,33,33,333/- commencing from 11 April 2013 and ending on 11 June 2013;
>
> (iv) The amount of Rs. 2.33 crores would be divided equally between Sitaram Goel, Manoj Goel and ACL who would issue cheques in favour of the complainant in compliance of the settlement;
>
> (v) Towards discharge of the liability, post-dated cheques dated 11 April 2013, 11 May 2013 and 11 June 2013 had been handed over; and
>
> (vi) Any default in complying with the conditions set out in the compromise deed would entitle the complainant to file a fresh criminal complaint under the NI PART C Act against the drawer of the cheques and to proceed against the other directors; and
>
> (vii) Upon the payment of the entire settlement amount of Rs. 10 crores, all criminal complaints, suits, arbitration proceedings and Section 138 proceedings would be withdrawn.

36 It is not in dispute that following the receipt of an amount of Rs. 3 crores, in pursuance of the compromise deed, Mukesh Goel was granted bail by the competent court. The balance due and payable under the deed of compromise has admittedly not been paid and the second set of cheques has been dishonoured. ACL proceeded to institute a suit before the Madras High Court to challenge the deed of compromise. While the suit is pending, the interim application stands dismissed. In this backdrop, there are two sets of criminal complaints under Section 138 of the NI Act based on the dishonour of the first set of cheques and the second set respectively.

37 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 27 has (2012) 1 SCC 260 PART C emphasised how punishment of the offender is of a secondary concern for the complainant

in the following terms:

> "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."

38 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 PART C 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.

39 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. 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. 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. 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 PART C 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.

40 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. 41 At this stage, it may be necessary to dwell on the decision of this Court in Lalit Kumar Sharma v. State of Uttar Pradesh 28 and Arun Kumar v. Anita Mishra 29. In Lalit Kumar Sharma (supra), a company, with two directors (Manish Arora and Ashish Narula), had obtained a loan for the amount of Rs.5,00,000/- and (2008) 5 SCC 638 (2020) 16 SCC 118 PART C drew two cheques in an equivalent amount in favour of the first respondent. The cheques were returned unpaid for "insufficiency of funds". A complaint was instituted under Section 138 of the NI Act against the two directors. The appellants, who were also directors of the said company, were not signatories to the cheques and had not been made parties to the complaint. During the pendency of the complaint, an agreement was entered into between Manish Arora, Ashish Narula and the complainant under which it was envisaged that if a cheque for Rs.5,02,050/- was issued, the complaint would be withdrawn. Manish Arora issued a cheque which was returned on presentation for insufficiency of funds. Meanwhile, Ashish Narula and the company entered into an agreement stating that the liability arising from the said transaction was of the director personally, and not of the company. Another complaint was filed on the basis of the return of the subsequent cheque, where Manish Arora and Ashish Narula and the appellants were made parties. In this backdrop, the Court noted that in respect of the first cheques, the appellants were not proceeded against and though a compromise was entered into between Manish Arora and Ashish Narula and the complainant, the complaint had not been withdrawn and the two directors had been found guilty of an offence under Section 138 of NI Act. Manish Arora had issued the second cheque in terms of the settlement between the parties. It was in this backdrop, that the Court observed:

> "15. Evidently, therefore, the second cheque was issued in terms of the compromise. It did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt.

[...] PART C

> 17. Thus, the second cheque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the Directors. There was only one transaction between Shri Ashish Narula, Shri Manish Arora, Directors of the Company and the complainant.

They have already been punished. Thus, the question of entertaining the second complaint did not arise. It was, in our opinion, wholly misconceived. The appeal, therefore, in our opinion, must be allowed. It is directed accordingly. The respondent shall bear the costs of the appellants. Counsel's fee assessed at Rs. 25,000." 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 PART C 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 The above decision has been subsequently considered in a very recent decision of a two judge Bench in Arun Kumar v. Anita Mishra 30. In that case, a complaint was filed by the appellant under Section 138 against the respondent. The Judicial Magistrate, First Class, convicted and sentenced the respondent to six months' imprisonment and to a fine. During the pendency of the criminal appeal, a compromise was arrived at before the Lok Adalat in terms of which the respondent issued a post-dated cheque in favour of the appellant. The cheque was dishonoured on presentation and this led to the institution of a complaint under Section 138. The respondent filed an application for dismissal of the complaint. The application and a revision were dismissed. A petition under Section 482 CrPC thereafter was allowed by the High Court on the ground that the question of quashing the second complaint did not arise when the cheque was not issued in discharge of any debt or liability but on account of a settlement. Distinguishing the earlier judgment in Lalit Kumar Sharma (supra), the Court held:

> "9. Lalit Kumar case [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] is distinguishable on facts, in that the cheque had not been issued in discharge of any debt or liability of the company of which the accused were said to be

> the Directors. The cheque was found to have been issued for the purpose of arriving at a settlement.
>
> (2020) 16 SCC 118 PART C
>
> 10. In the instant case, the respondent clearly had a liability.

As observed above, there was an earlier adjudication which led to the conviction of the respondent accused. Thus there was adjudication of liability of the respondent accused. While the appeal was pending, the matter was settled in the Lok Adalat in acknowledgment of liability of the respondent-accused to the appellant complainant.

11. The cheque issued pursuant to the order of the Lok Adalat, was also dishonoured. This clearly gave rise to a fresh cause of action under Section 138 of the Negotiable Instruments Act." (emphasis supplied) 44 In the decision in Arun Kumar (supra), the subsequent cheque, following the conviction of the appellant in an earlier complaint under Section 138, was issued towards a settlement which was arrived at before the Lok Adalat during the pendency of the appeal. The Court distinguished the decision in Lalit Kumar Sharma (supra) by holding that the dishonour of the cheques in pursuance of the order of the Lok Adalat gave rise to a fresh cause of action under Section 138. Moreover, the Court was persuaded to act on the second complaint as the first complaint had resulted in a clear finding of guilt, however no punishment had been granted owing to the compromise. Thus, there was no doubt regarding the existence of a debt or liability in furtherance of which the cheque was issued. Hence, the decision in Arun Kumar (supra) would indicate that the question as to whether the dishonour of a subsequent cheque (in that case pursuant to a settlement before the Lok Adalat) gives rise to a fresh cause of action is a question of fact to be determined in each case. In other words, the earlier decision in Lalit Kumar Sharma (supra) cannot be construed as laying down and invariable or inflexible PART C principle that a cheque issued subsequently in terms of a settlement, after the dishonour of an earlier cheque does not create a new liability. Lalit Kumar Sharma (supra) was decided on the facts of the case, as noticed earlier in the present judgment.

45 Based on the discussion above, in our opinion, once the compromise deed dated 12 March 2013 was agreed, the original complaint must be quashed and parties must proceed with the remedies available in law under the settlement agreement.

C.2 Liability arising from the settlement agreement 46 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. 47 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 PART C 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:

> (i) 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; and
>
> (ii) The validity of the deed of compromise had been challenged in the suit pending before the High Court.

48 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 PART C 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.

49 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. 50 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 PART C 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 31:

> "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." 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."

51 Section 139 of the NI Act raises the presumption, unless the contrary is proved that the holder of a cheque receives the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

(2015) 11 SCC 776 (2016) 10 SCC 458 PART C Interpreting the provisions of Section 139 in Kumar Exports v. Sharma Carpets 33 this Court has observed:

> "18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.
>
> 19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed

> and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over."

52 The accused, the Court held, may adduce direct evidence to prove that the cheque in question was not supported by consideration and that there was no debt or liability to be discharged. To disprove the presumption, the accused has to bring on the record circumstances which may lead the court to believe that the consideration and debt did not exist or it was so probable that a prudent man would (2009) 2 SCC 513 PART C act upon the plea that they did not exist. After adverting to these decisions, a two judge Bench in Kishan Rao v. Shankargouda 34, noted in that case that:

> "21. In the present case, the trial court as well as the appellate court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank, the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant, the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed by the High Court."

53 Section 139 raises the presumption "unless the contrary is proved". Once the complainant discharges the burden of proving that the instrument was executed by the accused; the presumption under Section 139 shifts the burden on the accused. The expression "unless the contrary is proved" would demonstrate that it is only for the accused at the trial to adduce evidence of such facts or circumstances on the basis of which the burden would stand discharged. These are matters of evidence and trial. As held in Arun Kumar (supra) and discussed above, the determination of whether a cheque pursuant to a settlement agreement arises out of a legal liability would be dependent on various factors, such as the underlying settlement agreement, the nature of the original transaction and whether an adjudication on the finding of liability was arrived at in the original complaint, the defence raised by the accused, etc. The Single Judge was in error in proceeding to quash the criminal (2018) 8 SCC 165 PART C complaint on a priori reasoning that the second set of cheques issued in pursuance of the deed of compromise were not in discharge of a liability and on that basis proceeding to quash the proceedings under Section 482 CrPC. The mere fact that a suit has been instituted before the Madras High Court challenging the deed of compromise would furnish no justification for exercising the jurisdiction under Section 482. The deed of compromise would continue to be valid until a decree of the appropriate court setting it aside is passed. The High Court, as we have explained above, has failed to notice the true meaning and import of the presumption under Section 139 which can only be displaced on the basis of evidence adduced at the trial.

54 A submission was urged by the appellants that in the event the second complaint is found to be non-maintainable and the compromise deed is held to be invalid, they would be left remediless and thus, the first trial should be allowed to continue. We do not find any merit in this submission. In the event that the compromise deed is found to be void ab initio on account of coercion, the very

basis for quashing of the first complaint is removed since the settlement agreement is deemed to have never existed and hence it had no effect on the liability subsisting under the first complaint. The appellants may then approach the competent court for reinstatement of the original complaint and the trial can proceed on that basis.

PART D

D Conclusion

55 For the above reasons, we hereby pass the following order:

(i) We are of the view that the Single Judge was in error in quashing the

complaint CC No. 389/2017 pending on the file of the Seventh Metropolitan Magistrate, Chennai. The judgment of the Single Judge quashing the complaint is set aside;

(ii) Based on our analysis in Section C.1 above, we hereby quash the complaint CC Nos.3326-3329 of 2012 and CC Nos.99-101 of 2013.

56 As regards the companion appeal, we have already noted the submission of Mr Jayant Bhushan that the issue as to whether the transaction was not a sale or otherwise could not have been enquired into in the course of the proceedings under Section 482 CrPC. All the rights and contentions of the parties are kept open in the course of the trial. Accordingly Criminal Appeal No. 1068 of 2021 arising out of SLP (Criminal) No. 6564 of 2019 and Criminal Appeal Nos. 1069-1075 of 2021 arising out of SLP (Criminal) Nos.7632-7638 of 2019 shall stand partially allowed in the above terms.

PART D 57 Pending application(s), if any, stand disposed of.

…….……………..………………..............................J. [Dr. Dhananjaya Y Chandrachud] … . . … … . … … … … . … … … … … … … . . . . J. [Vikram Nath] ....J. [B.V. Nagarathna] New Delhi;

October 08, 2021.