IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.04.2025

\+ **CRL.REV.P. 85/2023, CRL.M.A. 23745/2023 & CRL.M.(BAIL) 145/2023**

ALKA KAUSHAL .....Petitioner

versus

GULSHAN ARORA ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Madhav Khurana, Mr. Nishank Mattoo, Mr. Rishabh Munjal, Mr. Ishan K. Dubey, Ms. Shaurya Singh & Ms. Sanjivani, Advocates.

For the Respondent : Mr. Alok Kumar Pandey & Ms. Riya Sachdeva, Advocates.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed, *inter alia*, challenging the judgment dated 21.01.2023 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi, in Criminal Appeal No. 136/2020.

2. By the impugned judgment, the learned Appellate Court upheld the judgment dated 06.10.2020 and order on sentence dated 28.10.2020, passed by the learned Trial Court, in CC No. 54753/2016, whereby the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of ₹30 lakhs, and in default of payment of fine, to further undergo simple imprisonment for a period of six months.

3. The brief facts leading to filing of the present petition are as follows:

3.1. The complaint was instituted by the respondent due to dishonour of a cheque drawn by the petitioner for a sum of ₹15,00,000/-. It was alleged that the respondent/ complainant had known the petitioner since a long time and he had provided her with financial assistance for investments in TV serials and film projects, on the basis of assurances of repayment after completion of the projects. It is alleged that the petitioner never repaid the loaned amount and evaded payments on one pretext or the other. Against the aforesaid liability, the petitioner issued a cheque that was dishonoured upon presentation. The respondent filed a criminal complaint, being, CC No. 2152/1/08, but the matter was subsequently settled between the parties. It is alleged that as part of the said settlement, the respondent withdrew the earlier complaint and the petitioner handed over the cheque in question for ₹15 lakhs to the respondent. The said cheque

was dishonoured due to "insufficient funds", which led to filing of the current complaint.

3.2. When the matter was at the stage of final arguments before the learned Trial Court, the complainant filed an application under Section 311 of the Code of Criminal Procedure, 1973 ('**CrPC**') for taking certain additional documents on record. One of the prayers sought in the said application was for summoning of official witness from the record room of Rohini District Court along with the case file of CC No. 2152/1/08. The said application was rejected by order dated 28.08.2020.

3.3. Subsequently, in CRL.M.C. 1768/2020, by order dated 16.09.2020, this Court granted a limited relief to the respondent to the extent that if the judgment had not been pronounced, the order dated 20.08.2009, passed in CC No. 2152/1/08, shall be taken into consideration by the learned Trial Court.

3.4. The matter was reserved for judgment on 25.09.2020. Thereafter, the respondent moved an application seeking recording of additional statement of accused under Section 313 of the CrPC in relation to the order dated 20.08.2009, passed in CC No. 2152/1/08, that had been taken on record. The said application was allowed by the learned Trial Court by order dated 01.09.2020 and an additional statement of the petitioner was recorded under Section 313 of the CrPC on 30.09.2020.

3.5. The learned Trial Court, by judgment dated 06.10.2020, convicted the petitioner for the offence under Section 138 of the NI

Act. It was noted that the case of the petitioner was full of inconsistencies and contradictions and that she failed to rebut the presumptions against herself under the NI Act. The learned Trial Court rejected the defense of non-receipt of the legal demand notice by noting that the legal notice was sent to the petitioner's last known address and deemed delivered as per the records. It was also noted that the petitioner, having acknowledged her association with the address in question, could not establish that the notice was sent to an unrelated location.

3.6. The Trial Court also rejected the petitioner's defence that the cheque in question was a signed security cheque that she had issued to Mr. Prashant Mamgain and that there was no legal liability towards the respondent. It was held that the petitioner's liability remained intact as the cheque was endorsed to the respondent, and no evidence was produced to prove otherwise. It was also observed that the evidence adduced by the petitioner only showed that she was engaged in some transactions with Mr. Mamgain. The Trial Court further observed that the petitioner had preferred no evidence to show that she had asked for the return of cheque or taken any steps after Mr. Mamgain refused to return her security cheques or even issued any Stop payment instructions to her banker and initiated any civil or criminal proceedings against Mr. Mamgain.

3.7. The learned Trial Court found the petitioner's subsequent claim that she had been coerced into executing the settlement by Mr. Prashant Mamgain to be an afterthought, noting her failure to raise

such a defense at earlier stages or produce evidence in its support and held that the settlement created an independent contractual liability, which was legally enforceable.

3.8. By order on sentence dated 06.10.2020, the learned Trial Court sentenced the petitioner to undergo simple imprisonment for a period of two years and directed payment of compensation of ₹ 30,00,000/- (twice the cheque amount) to the complainant, and on default of the payment of the said compensation, the petitioner was directed to further undergo simple imprisonment for a period of 6 months. The learned Trial Court took into consideration the other convictions of the petitioner and the fact that the subject cheque which was dishonoured had been issued by the petitioner to settle another matter.

3.9. The learned Appellate Court, by impugned judgment, upheld the conviction of the petitioner under Section 138 of the NI Act as well as the sentence imposed by the learned Trial Court.

3.10. This led the petitioner to file the present petition.

4. The learned counsel for the petitioner submitted that the petitioner has been convicted in a mechanical manner without due application of mind and the learned Appellate Court, despite taking note of the judgments referred by the petitioner, has not considered even a single one of them.

5. He submitted that the subject cheque, issued under a compromise agreement, is not tied to a legally enforceable debt and the same was erroneously considered as an enforceable liability under Section 138 of the NI Act. He submitted that the entire case of the

respondent rests upon the purported order dated 20.08.2009 (Ex. CW-1), which was not specifically mentioned or relied upon for a period of ten years and found no mention in the legal notice dated 20.02.2010 and notice framed under Section 251 of the Code of Criminal Procedure, 1973. He further submitted that the respondent did not step into the witness box to prove the said exhibit which formed the whole basis of the case of the case of the respondent.

6. He further submitted that the learned courts below have failed to appreciate that the respondent had failed to establish the foundational facts which are a prerequisite before the statutory presumptions under Sections 118 and 139 of the NI Act are triggered. He relied upon the judgments in the cases of ***M/s. Gimpex Private Limited v. Manoj Goel*** **: (2022) 11 SCC 705** and ***Basalingappa v Mudibasappa*** **: (2019) 5 SCC 418** to buttress his argument.

7. He submitted that the respondent had failed to establish any financial transaction with the petitioner or his financial capacity and source of income to extend a loan of such a magnitude. He submitted that the learned Courts have erred by failing to consider that the Respondent did not comply with the Trial Court's order to produce his ITRs, warranting an adverse inference under Section 114(g) of the Indian Evidence Act, 1872.

8. He submitted that the petitioner had no direct financial dealings with the respondent and that the complaint is a proxy litigation initiated at the behest of a third party–Mr. Prashant Mamgain, who allegedly misused security cheques that had been given for an earlier

transaction. He submitted that the evidence presented includes a Memorandum of Understanding dated 22.07.2002 with Mr. Mamgain (Ex. DW1/1), 164 deposit receipts proving repayments totaling over ₹45,87,000/-[Ex. DW 1/4 (Colly)], and other supporting documents. He submitted that the petitioner's defense was ignored solely because she did not testify, despite proving her case through cross-examination of the complainant and documentary evidence.

9. He submitted that the learned Appellate court did not allow an opportunity to present arguments on sentencing, and the learned Trial court did not justify the harsh punishment imposed. He submitted that an imprisonment sentence is unnecessary, given the civil nature of the offence under Section 138 of the NI Act and the long duration of the trial. He further submitted that the fine of ₹30,00,000/- is excessive, especially considering that the alleged loan amount was only ₹10,00,000. He also submitted that the petitioner's personal circumstances, including, her being the caretaker of her daughter with special needs, were not considered while passing the sentence.

10. The learned counsel for the respondent submitted that the respondent had received the cheque in question from the petitioner on 20.08.2009 before the learned Trial Court, in the proceedings in CC 2152/2008. He submitted that the cheque was given with the assurance that it will be encashed upon presentation and the parties had also entered into a Compromise Deed on the basis of which the complaint was disposed of.

11. He submitted that the cheque was dishonoured upon presentation and the petitioner falsely pleaded before the learned Trial Court that she never handed the cheque for her liability to the respondent and she did not know how the respondent had received the same.

12. He submitted that the petitioner is a habitual offender and she is involved in multiple cases of a similar nature as well and the sentence imposed on her is not excessive, especially considering the nature of the offence.

ANALYSIS

13. Since the present revision petition has been filed under Section 397 of the CrPC, challenging the concurrent findings of both lower courts, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned judgment.

14. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law [Ref. ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke* : (2015) 3 SCC 123**]. It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Apex Court in the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*: (1999) 2 SCC 452** discussed the scope of revisional jurisdiction and held as under:

> *"5. ..... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice.* ***But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....****"*
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> (emphasis supplied)

15. It is also well settled that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*** **: (2010) 11 SCC 441**].

16. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh*** **: (2023) 10 SCC 148**, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

> *"54. .... Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court*

can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. ***At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?***

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57. Einstein had famously said: "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."

(emphasis supplied)

17. In the present case, initially, the petitioner stated in her statement under Section 313 of the CrPC that she had never taken any

loan from the complainant and the cheque had instead been given as a security to Mr. Prashant Mamgain as a security cheque, who misused the same despite repayment of loan. She also denied having ever settled the matter with the complainant earlier. Subsequently, after the order dated 20.08.2009 (Ex. CW-1) was brought on record by the respondent and the additional statement of the petitioner was recorded under Section 313 of the CrPC, she stated that Mr. Prashant Mamgain had coerced her into entering into the settlement.

18. The petitioner had also raised the defence of non-receipt of legal demand notice before the learned Trial Court as well as the learned Appellate Court. The said argument has not been pressed before this Court.

19. It is argued that the original complaint was filed *qua* dishonor of a security cheque that had been handed to a third party–Mr. Prashant Mamgain, which had been misused. It is also argued that the petitioner had no financial dealings with the complainant at all.

20. In this regard, the learned Trial Court observed that even if the cheque was issued in favour of Mr. Mamgain, it had been endorsed in favour of a third party in terms of Sections 47 and 48 of the NI Act. It was observed by the learned Appellate Court that there is no specific cheque numbers mentioned in the MOU dated 22.07.2002 (Ex. DW-1/1) and the petitioner had not examined Mr. Mamgain either. Thus, there is nothing to suggest that the cheque that was in question in the original complaint had been handed over to Mr. Mamgain instead. The deposit slips as well as the MOU dated 22.07.2002 only show that the

petitioner had some prior financial transactions with Mr. Mamgain. Even the evidence of DW-1 (husband of the petitioner) does not substantiate the case of the petitioner because while he states that Mr. Mamgain who was misusing the blank cheques given to him as security and the cheque was not issued in lieu of a compromise, the same is belied by Ex. CW-1. The petitioner has failed to establish that the cheque in dispute in the original complaint had actually been issued to Mr. Mamgain. It has also been rightly noted by the learned Appellate Court that the petitioner has not produced any evidence to show that she demanded back the signed cheques from Mr. Prashant Mamgain or initiated any civil or criminal action against him in this regard.

21. It is argued that even if the subject cheque has been handed over as part of a settlement, the respondent was required to prove the foundational facts in relation to existence of liability. It is argued that the respondent cannot be allowed to simply rely upon Ex. CW-1 whereby the alleged settlement between the parties was recorded in the first complaint. Reliance has been placed on the judgment in the case of ***M/s. Gimpex Private Limited v. Manoj Goel*** (*supra*) to contend that even if the cheque has been handed over as part of a settlement, the complainant has to still prove the existence of liability in relation to which the settlement was arrived at between the parties.

22. Before delving into the observations of the Hon'ble Apex Court in ***M/s. Gimpex Private Limited v. Manoj Goel*** (*supra*), it is important to succinctly discuss the factual matrix of that case. In the present

case, the Hon'ble Apex Court was seized with the issue of parallel prosecutions where the second set of complaints arise from a compromise that was effected to put a quietus to the first set of complaints. The complainant had filed the first set of complaints under Section 138 of the NI Act against dishonor of a number of cheques by Aanchal Cement Ltd. ('**ACL**'). A criminal complaint was also lodged by the complainant, in relation to which, one of the Directors of ACL was arrested. During the pendency of the bail application of the said Director, ACL allegedly approached the appellant for a compromise. On the basis of the compromise deed, the arrested Director was granted bail. The suit instituted by ACL alleging that the compromise was illegal was rejected and the appellant filed a second set of complaints under Section 138 of the NI Act against dishonor of cheques given in pursuance of the compromise deed. The second complaint was quashed by the Hon'ble High Court and the first set of complaints were allowed to continue. While dealing with the appeals in this regard, the Hon'ble Apex Court quashed the first set of complaints and allowed the second set of complaints to continue. It was observed that two parallel set of complaints cannot be allowed to continue and once a compromise deed had been entered into, the first set of complaints could not continue.

23. It is argued by the learned counsel for the petitioner that the Hon'ble Apex Court has clearly made a distinction between settlements arrived at before adjudication of liability and those after by discussing the cases of ***Lalit Kumar Sharma v. State of U.P.*** **: (2008)**

5 SCC 638 and ***Arun Kumar v. Anita Mishra*** **: (2020) 16 SCC 118**. It is argued that cheques issued, in pursuance of a settlement/ compromise entered into before conviction, cannot be said to automatically give rise to a fresh cause of action. The relevant portion of the judgment is reproduced hereunder:

> "***44.*** *At this stage, it may be necessary to dwell on the decision of this Court in* ***Lalit Kumar Sharma v. State of U.P. [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682]*** *and* ***Arun Kumar v. Anita Mishra [Arun Kumar v. Anita Mishra, (2020) 16 SCC 118 : (2021) 2 SCC (Cri) 124] . In Lalit Kumar Sharma [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682]*** *, a company, with two Directors (Manish Arora and Ashish Narula), had obtained a loan for the amount of Rs 5,00,000 and 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 the 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 : (Lalit Kumar Sharma case [Lalit Kumar Sharma*

v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] , SCC p. 642, paras 15 & 17)

> *"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.***
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> *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."*

45. *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 [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] 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 regard to the same transaction.* ***The first complaint had concluded, only after which the Court observed that the second complaint could not be initiated.*** *In fact, Lalit Kumar Sharma [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] 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.

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47. *In the decision in* ***Arun Kumar [Arun Kumar v. Anita Mishra, (2020) 16 SCC 118 : (2021) 2 SCC (Cri) 124]*** *, 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 [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] 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 [Arun Kumar v. Anita Mishra, (2020) 16 SCC 118 : (2021) 2 SCC (Cri) 124] 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 [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] cannot be construed as laying down an invariable or inflexible 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 [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] was decided on the facts of the case, as noticed earlier in the present judgment.*

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57. *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 [Arun Kumar v. Anita Mishra, (2020) 16 SCC 118 : (2021) 2 SCC (Cri) 124] 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 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*"
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> (emphasis supplied)

24. The learned Trial Court has rightly observed that in the case of ***Lalit Kumar Sharma v. State of U.P.*** (*supra*), the original complaint was still pending due to which it was held that since the compromise did not fructify, the cheques issued as per settlement could not be said to be issued towards payment of debt. In the present case, the respondent withdrew the complaint and it cannot be said that the compromise did not fructify. In ***Arun Kumar v. Anita Mishra*** (*supra*), it was held that whether a cheque issued in pursuance of a settlement gives rise to a fresh cause of action, is to be seen in the facts of each case.

25. It transpires from the aforesaid judgments that whether the liability arises from a settlement agreement is a matter of trial and evidence. While adjudication of liability in the original complaint is a factor, other factors like the underlying settlement agreement have to be also given due consideration. It cannot be said that it is incumbent on the complainant to establish the existence of a legally enforceable

debt in the original complaint in each and every case where the settlement in question is effected before adjudication of liability.

26. Coming to the facts of the present case, a bare perusal of Ex. CW-1 shows that when the complainant withdrew the first complaint, being, CC 2152/1/08, in terms of the compromise between the parties, he had received the subject cheque as part of the settlement. The cheque details were duly noted in the said order and the statements of the petitioner as well as the respondent was also recorded. The petitioner had assured that the subject cheque shall be encashed and she would abide by the terms of the compromise deed between the parties. The petitioner had affirmed her signature on the compromise deed as well.

27. The learned Appellate Court held that the bald averments made by the petitioner in her statement under Section 313 of the CrPC that she had been coerced by Mr. Mamgain into entering into the settlement hold no water as the same cannot be read into evidence due to not being subjected to cross examination. Even so, it cannot be ignored that the petitioner took no action against the alleged coercion and also did not seek cancellation of the compromise deed that led to withdrawal of the original complaint.

28. It is also relevant to note that the compromise deed records the admission of the petitioner to the liability in complaint case bearing no. 2152/1/08. As noted above, undue emphasis cannot be laid solely on the factor of adjudication of liability, because even though the same is a factor, the absence of such adjudication does not relegate the

complainant to establishing its case afresh, especially when the unchallenged compromise deed records admission on part of the accused.

29. It is also relevant to note that the Hon'ble Apex Court in ***M/s. Gimpex Private Limited v. Manoj Goel*** (*supra*) has considered the issue of liability arising out of a settlement agreement and bolstered that once settlement is effectuated, the parties cannot be allowed to go back on the same. The relevant portion of the judgment is reproduced hereunder:

> "***41.*** *When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons — higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates.* ***Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance.*** *The settlement agreement subsumes the original complaint.* ***Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law.***
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> ***49. 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.***
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> ***53.*** *...* ***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. ..."
(emphasis supplied)

30. As noted by the Hon'ble Apex Court, once the parties have entered into a settlement they cannot be allowed to reverse the effects of the same. Just as a complainant undertakes the risk of the accused failing to honor the settlement, the accused is also bound to the said settlement and cannot be allowed to violate the same and then raise defences as available in the original complaint. If the said proposition is accepted, it would render the settlement to be of no import. The accused would be at an unfair advantage where he could enter into a settlement and reap its benefits by getting exonerated in the original complaint, and subsequently, in case a second complaint is filed, he would be free to reagitate all the grounds as available to him originally and protract the proceedings to his whim. It is due to this that the settlement effected between the parties and the contents thereof will act as an adverse inference against the accused.

31. In the present case, after reaping the benefits of the complainant withdrawing the first complaint, the petitioner initially denied the factum of any settlement or compromise. After Ex. CW-1 was brought on record, she admitted to the compromise but maintained that the same had been effected under coercion of Mr. Mamgain. No reason has been provided as to why the petitioner did not initially take this ground or challenge the deed for around sixteen years. This Court cannot proceed in ignorance of the contents of the compromise deed

as well as CW-1. While an accused can enter into a settlement for a variety of reasons, the present case is one where the accused petitioner has gone ahead and also admitted her liability in the original complaint in the compromise deed.

32. The learned trial Court has rightly noted that the compromise deed has all the essentials of a contract wherein once the respondent withdrew the original complaint, the petitioner could not be allowed to escape her liability under the same.

33. In such circumstances, while it is argued by the learned counsel for the petitioner that the complainant did not have the financial capacity to extend a loan of the alleged magnitude and he had failed to show the source of the loan extended by him, the said argument is found to be bereft of any merit. The learned Trial Court and the learned Appellate Court have rightly appreciated that the complainant fulfilled his part by withdrawing the complainant, however, the petitioner did not abide by her part of the agreement. It has been rightly appreciated that the liability of the petitioner in the present case stems from the compromise deed dated 11.08.2009 whereby the financial capacity of the complainant to extend the loan originally is of no consequence, especially when the petitioner has unequivocally admitted her liability in the original complaint in the said compromise deed. The same is enough to draw an adverse inference against the petitioner even in regards to the original complaint.

34. The learned Appellate Court has also rightly appreciated that merely because there is no mention of the compromise in the legal

notice does not act to the benefit of the petitioner. The legal notice clearly makes a mention of the cheque details and the respondent also made mention of the compromise in his pre-summoning evidence.

35. At this juncture, this Court also deems it apposite to comment on the propensity of the petitioner to enter into a settlement and thereafter deny the same. The petitioner has evidently given a false statement when her statement under Section 313 of the CrPC was recorded. There is no doubt that the parties entered into a settlement in the original complaint, in terms of which, the complainant withdrew the same. The petitioner cannot be allowed to claim any advantage merely because the compromise deed was not brought on record at the first instance by the complainant.

36. In view of the aforesaid discussion, it is clear that the petitioner has not been able to raise a probable defence and this Court finds no infirmity in the conviction of the petitioner for the offence under Section 138 of the NI Act.

37. Insofar as the sentence is concerned, the learned Trial Court appreciated the prior convictions of the petitioner as well as the nature of offence to impose the fine of twice the cheque amount as well as simple imprisonment of two years.

38. It is submitted that the petitioner is an old woman and she is the sole earning member in her family. It is further submitted that the petitioner has a dependent daughter with special needs as well. It is noted that the said submissions had also been noted by the learned Trial Court in the order on sentence dated 28.10.2022. However, in the

impugned judgment, the learned Appellate Court has merely recorded that it finds no legal infirmity in the order on sentence. Considering the mitigating circumstances brought forth by the petitioner as well as the quantum of fine imposed, in the opinion of this Court, interests of justice would be met if the sentence imposed on the petitioner is modified to the extent of only payment of the fine amount of ₹30,00,000/- with no substantive sentence of imprisonment. In default of payment of fine, the petitioner shall undergo simple imprisonment for a period of six months. Let the fine amount be released to the respondent as compensation. This Court is not interfering in the fine amount considering the nature of the offence as well as the conduct of the petitioner to blatantly deny having entered into any settlement at the first instance.

39. It is seen that the petitioner had deposited ₹15 lakhs with the Registrar General of this Court in two tranches of ₹7.5 lakhs each. Let the amount so deposited be released in favour of the respondent along with any accrued interest.

40. Let the remaining fine amount be paid within a period of four weeks.

41. The complainant is at liberty to file appropriate proceedings in case the fine amount is not paid within four weeks.

42. The present petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

APRIL 01, 2025