



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

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Reserved on: 24th March, 2025

Pronounced on: 30th April, 2025

CRL.A. 386/2025

DEVI SHARAN TYAGI

.....Petitioner

S/o Late Sh. Ram Chander Tyagi

R/o A-2/19, Sector-4,

Rohini, Delhi

Through: Mr. Rishipal Singh, Mr. Pradeep
Sharma and Mr. Ashu Singh,
Advocates along with Petitioner in
person.

Versus

RAJU MALHOTRA

.....Respondent

S/o Sh. R.K. Malhotra

R/o A-3/57, Sector-4,

Rohini, Delhi - 110085

Through: Mr. Shivek Trehan (DHCLSC) and
Mr. Ishaan Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Appeal has been filed under Section 378(1) of the Code of Criminal Procedure, 1973 on behalf of the Appellant/Complainant, Devi Sharan Tyagi, against the Judgment dated 28.07.2020 *vide* which the learned M.M., Delhi, has **acquitted** the Respondent/Accused, Raju Malhotra in *Complaint*



Case No. 4681/2016 under Section 138 of the Negotiable Instruments Act, 1881.

2. ***Briefly stated***, the Appellant/Complainant filed a Complaint under Section 138 N.I. Act alleging that in the first week of January, 2003, he gave a friendly loan of Rs. 2,05,000/- vide Cheque bearing no. 595711 dated 04.02.2003 drawn on ICICI BANK, Punjabi Bagh, Central Market, New Delhi-110026, for a period of one month in January, 2003 for a short period to the Respondent, being known through mutual family friend, on his request of having shortage of funds for purchasing the house.
3. The said Cheque, on presented for encashment, was dishonoured *vide* returning memo dated 17.07.2003 for the reasons '*funds insufficient*'.
4. The Complainant on not being able to get any satisfactory response from the respondent who started avoiding him, gave a legal Demand Notice dated 22.07.2003 but despite service, Respondent failed to make payment within statutory period. Hence, the Complaint under S.138 NI Act was filed, in which the Notice under Section 251 Cr.P.C. was framed on 26.11.2010, against the Respondent.
5. It is submitted that the Respondent admitted the claim of the Complainant on 12.03.2014 in Court and they settled the matter. The respondent agreed to pay the cheque amount in two instalments out of which first instalment was to be paid by Respondent in mid April and rest amount was to be paid by Respondent in mid of June. The offer of the Respondent was admitted by the Appellant.
6. In the meanwhile, the original Complaint was returned to the Complainant *vide* order dated 12.11.2014 due to lack of jurisdiction in view



of judgement of Apex Court in the case of Dashrath Roop Singh Rathore vs. State of Maharashtra to be presented in the appropriate court.

7. The Complaint was again filed on 13.12.2014, on which cognizance was taken on 27.05.2015. The Accused entered appearance on 08.06.2016 and Notice u/S. 251 Cr.P.C was framed afresh on 08.06.2016 wherein, the respondent backed out from his previous Settlement dated 12.03.2014 and claimed trial.

8. In the present complaint, the Complainant examined himself as CW-1. The Respondent was granted opportunity to cross-examine the Complainant *vide* Order dated 18.07.2018. The evidence of Complainant was closed *vide* separate Statement, on 19.11.2018.

9. Statement of Respondent under S. 313 Cr.P.C. was recorded on 22.01.2019. The respondent examined himself as DW-1 and DW-2 Ms. Megha Malhotra, his wife.

10. Ld. Trial Court *vide* its judgement dated 28/07/2020 acquitted the respondent.

11. **The Acquittal is sought to be challenged** on the ground that the respondent admitted of taking money/ loan from the appellant and he also admitted that he could not pay in time due to financial hardship, which established that there was a legal and enforceable liability. Furthermore, the Respondent accepted that the said cheque was dishonoured due to insufficient fund, in his Statement u/s 313 Cr.P.C.

12. It is submitted that the Respondent admitted his signature on the cheque in question, giving rise to a presumption against him as held by the Apex Court in the case of Rang Appa vs. S. Mohan, (2020) 11 SCC 441.



Similarly, Coordinate Bench of this Court in the case of Ravi Chopra vs. State, 2008 (2) JCC (NI) 169, observed that once signature is accepted, it would be immaterial as to who filled in the cheque.

13. It is therefore, submitted that the impugned judgement is liable to be set aside.

14. The learned counsel for the Respondent has submitted that there is no infirmity in the judgment of the Ld. M.M. and the accused has been rightly acquitted for the offence under Section 138, as the essential ingredients to constitute an offence under Section 138 were not made out.

15. The learned counsel for the Respondent has placed reliance on Rajaram vs. Maruthachalam, 2023 SCC OnLine SC 48 wherein the Court has observed that the scope of interference in an Appeal against acquittal is limited. It is observed that *“unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.”*

16. Further, reliance has also been placed on C. Antony vs K. G. Raghavan Nair, (2003) 1 SCC 1, wherein it is observed by the Apex Court that the Appellate Court cannot re-appreciate the case simply because an alternative view is possible, without first finding that the conclusions arrived at by the trial court are unreasonable or contrary to material on record.

17. Thus, it is prayed that the Petition be dismissed.

18. **Submissions Heard and Record Perused.**

19. This case involves an interesting issue about the status of subsequent the Complaint once the parties have arrived at a Settlement.



20. The First Complaint under S.138 NI Act was filed in 2003 wherein after the respondent/ accused but in his appearance, the Notice under Section 251Cr.P.C was framed on 26.11.2010 to which the respondent pleaded not guilty.

21. Thereafter, during the pendency of proceedings, the Parties arrived at a Settlement and made the statement on 13.03.2014. The accused made a statement as under:

“I have agreed to pay cheque amount into two instalments out of which first instalment to be paid by me on mid- April and just of amount shall be paid by me in mid-June.”

22. The statement of the Complainant was:

“I am complainant in the present case and have settle the matter with accused of CHEQUE OF 2,05,000/- full and final and accused is ready TO pay into TWO installment one out of which first installment its to be paid IN mid of April and rest of the amount it's to be paid in the mid-June by the accused.”

23. This settlement was accepted by the Ld. MM and the relevant part of the Order dated 12.03.2014, is reproduced as under:

“It is submitted by both parties that they have settled the present matter amicably and accused has undertake to pay cheque amount of Rs. 2,05,000/- in two equal instalments.

Heard.

Separate statement of complainant as well as accused has been recorded to this effect.

Put up the matter on 25/04/2014 for further proceedings”

24. From the bare perusal of the Order, it is evident that the Parties not only amicably settled the Complaint but were only required to act upon it and consequently the matter was listed for compliance of the settlement only.



25. However, while the Complaint was pending only for Compliance of Settlement and payments to be made in terms of Settlement, the Complaint had to be returned due to change in jurisdiction following Supreme Court guidelines.

26. The Complaint was refiled and it came to be decided on merits, wherein the accused/Respondent was acquitted for the offence under Section 138 N.I. Act on the ground that the Complainant failed to establish the legal debt and issuance of the cheque in discharge of the legal liability.

27. Therefore, **the first question that needs to be answered is: whether there existed any cause of action in the second Complaint filed on the same cause of action, in view of the amicable settlement of the matter in terms of their Statements recorded on 12.03.2014 confirming the terms of Settlement.**

28. This aspect was explained by the Apex Court in Gimpex Private Limited vs Manoj Goel, (2022) 11 SCC 705, wherein it was observed that once a compromise has been agreed upon by the parties, the original Complaint must be quashed and parties must proceed with the remedies available in law under the settlement Agreement. The Complainant can seek compliance of the settlement either by seeking Execution or Contempt petition.

29. The Division Bench of this Court in Dayawati vs Yogesh Kumar Gosain, (2017) 243 DLT 117, observed that the legislative mandate in enacting Sections 138 and 147 of the N.I. Act—namely, to ensure an expeditious time-bound remedy for recovery of the Cheque amounts, is accomplished by binding the parties to a settlement agreement reached



through a formal mediation process and holding them accountable for upholding it.

30. Further, the court has held that a written settlement agreement signed by the parties or their counsels is legal and that the parties' assent was given voluntarily, free from coercion, undue influence, or force. Therefore, in the same way that the civil court considers a settlement presented to it under Order XXIII Rule 3 of the CPC, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness, and their commitment to abide by it.

31. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the N.I. Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof. Consequently, the amount payable under the settlement would become an amount payable under an order of the

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

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



33. In the instant case, the settlement between the parties was recorded by a Court of competent jurisdiction. Thus, the subsequent proceedings were non-est as there survives no legally enforceable debt in respect of which the second Complaint could have been filed. The previous Complaint got subsumed in the Settlement dated 13.03.2014.

34. In view of the above discussion, the proceedings undertaken in the subsequent refiling of the Complaint, on same cause of action, are misplaced and not valid. Any non-compliance, with the said Settlement, by the Accused, does not give rise a fresh cause of action and the subsequent Complaint on the same cause of action was not maintainable.

35. Furthermore, even though it has been held that there was no legally enforceable debt which survived on which the subsequent Complaint could be filed, but even on facts the learned Trial Court has concluded that there was no legally enforceable debt established by the Complainant and had acquitted the Respondent. The impugned Judgment of acquittal is hereby upheld, though for the reasons stated above.

36. To conclude, the learned M.M after recording the Settlement on 13.03.2014 had merely listed the matter for compliance. The proceedings undertaken thereafter were more in the nature of Execution than to proceed with the Trial on merits as has been held in the case of *Dayawati* (supra). In case the Settlement is not complied with, the option with the Complainant is to either seek Execution under Section 431 read with Section 421 Cr.P.C or to initiate the proceedings under *Section 2(b)* Contempt of Courts Act, 1971. There could not have been any subsequent trial on the Complaint in which the parties had arrived at the Settlement.



37. The Appeal is hereby dismissed with the aforesaid observations, whereby the Petitioner is entitled to take recourse to appropriate remedies.

38. The Appeal is accordingly disposed of along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2025