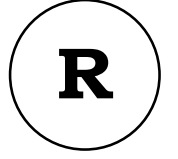


**Reserved on : 05.06.2024**  
**Pronounced on : 21.06.2024**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>st</sup> DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2998 OF 2023

**BETWEEN:**

SRI MATHIKERE JAYARAM SHANTHARAM  
S/O MATHIKERE RAMAIAH JAYARAM,  
AGED ABOUT 47 YEARS,  
R/AT NO.66, VRINDHAVAN,  
DODDABALLAPURA MAIN ROAD,  
NEXT TO CRPF, AVALAHALLI,  
YELAHANKA, BENGALURU – 560 064.

... PETITIONER

(BY SRI S.S.NAGANAND, SR.ADVOCATE FOR  
SMT.SUMANA NAGANAND, ADVOCATE)

**AND:**

SRI PRAMOD C.,  
S/O C.GOPALAN,  
DIRECTOR,  
AGED MAJOR,  
NO.5, RICHMOND ROAD,  
BENGALURU – 560 025  
R/AT NO.44, ROBERTSON ROAD,

FRAZER TOWN,  
BENGALURU – 560 005.

... RESPONDENT

(BY SRI SANDESH J. CHOUTA, SR.ADVOCATE A/W  
SMT. KRUTIKA RAGHAVAN, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO 1. SET ASIDE THE ORDER DATED 15-12-2022 (ANNEXURE A) IN C.C.NO.52590/2022 ON THE FILE OF XXXIV ADDL.C.M.M., MAYO HALL, BENGALURU ARISING OUT OF P.C.R.NO.50022/2022 FOR THE OFFENCE P/U/S 421 OF CR.P.C., 1973 AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The petitioner/accused No.1 has filed the instant criminal petition seeking the following reliefs:

"

- (a) *Call for the records in C.C.No.52590 of 2022 from the file of XXXIV Additional Chief Metropolitan Magistrate, Mayo Hall, Bengaluru arising out of PCR No.50022 of 2022;*
- (b) *Set aside the order dated 15-12-2022 (Annexure-A) in C.C.No.52590 of 2022 on the file of the XXXIV Additional Chief Metropolitan Magistrate, Mayo Hall, Bengaluru arising out of PCR No.50052 of 2022 for offence under Section 421 of Cr.P.C., 1973.*
- (c) *Set aside Order dated 22-02-2023 (Annexure-B) passed by the learned XXXIV Additional Chief Metropolitan Magistrate, Mayo Hall, Bengaluru.*
- (d) *Grant such other reliefs that this Hon'ble Court may deem fit in the interest of justice"*

2. Heard Sri S.S.Naganand, learned senior counsel appearing for the petitioner and Sri Sandesh J. Chouta, learned senior counsel appearing for the respondent.

3. Facts, in brief, germane are as follows:-

On 21-06-2011 one M/s Valdel Retail Private Limited (referred to as 'the Company' for short hereinafter), represented by its authorized representative one Mr.Suraj P. Shroff enters into an agreement of sale for purchase of a particular piece of land. Another agreement is entered into on 05-07-2011 for the same purpose. On 29-09-2021 the petitioner/accused No.1 makes a communication of resolution of a dispute between the two and issues cheques to be presented on various dates in favour of the respondent/complainant. On 13-10-2021 the cheque issued for ₹50,00,000/- was presented which comes to be dishonoured for the reason of funds being insufficient. On 20-10-2021 a further cheque for ₹2/- crores was deposited, which again gets dishonoured on account of insufficient funds. Dishonouring of cheques for payment leads the complainant to begin proceedings under Section 138 of

the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') by causing a legal notice on 13-11-2021.

4. When the proceedings were pending before the learned Magistrate, both the petitioner and the complainant agree to amicably settle the dispute and accordingly filed a joint memo before the concerned Court. Noticing the joint memo, the concerned Court passed an order acquitting the petitioner and directing the petitioner to pay certain sums of money to the complainant and reserving liberty to recover the amount in the event he would not pay under Section 421 of the Cr.P.C., The petitioner had agreed to pay ₹2,99,83,904/- by way of demand draft. That having not been done, the respondent invokes Section 421 of the Cr.P.C., The learned Magistrate, on 17-01-2023, issues a fine levy warrant against the petitioner and the other accused – accused No.2 who is not before the Court. On 21-02-2023, it is the averment that the jurisdictional Police knocks at the doors of the Company at a particular address and seeks to attach moveables. It is then the representative of the Company files an application and informs the Court that the Company is not in existence in the said

address and submits a demand draft for ₹10,00,000/-. On the same day, the respondent files details of the personal immovable properties of the petitioner and sought attachment of the same. The Court again issues notice for attachment of personal properties of the petitioner. It is then the subject criminal petition is preferred.

5. The learned senior counsel Sri S.S. Naganand appearing for the petitioner would contend that the transaction happens between the Company and the respondent. While registering the proceedings under the Act, the Company is not made a party. Only representative of the Company is made a party. Therefore, the very proceeding, by not making a Company a party, was illegal. He would submit that if the Company is not made a party all proceedings would tumble down. He places reliance upon a judgment of the Apex Court in the case of **ANEETA HADA v. GODFATHER TRAVELS AND TOURS PRIVATE LIMITED**<sup>1</sup> to buttress his submission and all subsequent judgments rendered following the said judgment of the Apex Court. He would submit that any amount of proceeding that has taken place including a

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<sup>1</sup> (2012) 5 SCC 661

settlement, without the Company a party, is a nullity in law. He, therefore, seeks quashment of proceedings under Section 421 of the Cr.P.C., It is the further submission of the learned counsel that while closing the proceedings on account of settlement the learned Magistrate could not have reserved liberty in the respondent/complainant to invoke Section 421 of the Cr.P.C.

6. Per contra, the learned senior counsel Sri Sandesh J. Chouta appearing for the respondent would refute the submissions to contend that the Company was not made a party, true. But, the case does not get closed on account of it being decided on merits. It is a settlement arrived at between the parties. The settlement is on certain pretext. The petitioner who ought to have paid close to ₹3/- crores has paid only ₹10/- lakhs and is walking away freely. On account of the said settlement if liberty was not reserved in the complainant, as was done by the learned Magistrate, the complainant would suffer at the hands of the accused which would become highly unjust. Therefore, no fault can be found with the action of the concerned Court attaching the property of the petitioner.

7. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The transaction between the parties is also not in dispute. The proceedings between the two were pending in C.C.No.52590 of 2022 is a matter of record. During the pendency of proceedings, the parties to the *lis* enter into a settlement. The settlement is recorded by the concerned Court and proceedings are closed. It becomes germane to notice the said order:

1. *"Whether the Complainant proves the cheques Issued by the accused dishonoured with an endorsement as **"funds insufficient"** and inspite of service of legal notice and demand the accused failed to pay the cheques amount within stipulated period as such they have committed an offence punishable under Section 138 of Negotiable Instruments Act?"*
2. *What order?*

10. *My answer to the above points are as follows:*

***POINT No.1: In the Negative***

***POINT No.2: As per final order for the following:***

**REASONS**

11. **POINT No.1** The Complainant filed this complaint against the Accused persons for the offence punishable u/Sec.138 of N.I. Act. In order to prove the case, the Complainant examined himself as PW1 and got marked in all 13 documents as Ex.P1 to Ex.P13.

12. When the case was posted for cross of PW1 and objection to the application filed by the Complainant u/Sec. 143(A) of N.I. Act, both the Complainant and Accused along with their respective Counsels present before the court and filed Compromise Petition u/Sec. 147 of N.I. Act stating that the dispute between the parties is settled. It is further averred in the compromise petition that the Accused undertakes to repay entire Cheques amount along with liquidated damages totally a sum of Rs.3.05,37,671/-. The Complainant has agreed to received a sum of Rs.2.99.83,904/- after deducting TDS of Rs.5,53,767/- on 16.1.2023 by way of D.D. The Complainant has also agreed for the same.

13. The Accused further agreed that the settled amount will be pay on 16.1.2023 by way of D.D. Further, Complainant and Accused agreed that joint memo will be filed in O.S.No.6977/12 (CCH 31), O.S.No.712/2012 and O.S.746/2012 both in IV Addl. Senior Civil Judge, Bengaluru respectively and that the Accused will not pursue the Suit filed against the Complainant.

14. As per the Sec. 147 of N.I. Act, the parties of the proceedings can compound the case. On perusal of petition, it is clear that the compromise arrived between the parties is free From force, coercion, threat etc., and deserves to be allowed. Therefore, the **Point No.1 is answered in the Negative.**

15. **POINT No.2:** In view of discussion held in Point No. 1, I proceed to pass the following:

### **ORDER**

Acting under Section 255 (1) of Cr.P.C. and Sec. 147 of N.I. Act, the accused are hereby acquitted for the offence punishable u/Sec. 138 of N.I. Act.



*It is directed to the Accused persons to pay the installments as agreed in the joint compromise petition submitted u/Sec.147 of N.I. Act to the Complainant.*

*In default the Complainant is at liberty to recover the said amount by invoking Sec.421 of Cr.P.C."*

The concerned Court records that the parties have filed a compromise petition under Section 147 of the Act on the score that the dispute has been settled and the complainant has agreed to receive the amount of ₹2,99,83,904/- and the said joint memo would also be filed in the other proceedings is what is recorded and the offence is compounded. An order of acquittal is passed, reserving liberty in the event of default to the complainant to invoke Section 421 of the Cr.P.C. The accused defaults in payment. When the cup of woe came to the brim, he pays ₹10,00,000/-. The amount that is recoverable remains at ₹2,89,00,000/-. Now the issue is, whether the Company not being a party to the proceedings initially, would annul all the subsequent actions which have emerged out of settlement. If it were to be a proceeding that has ended on merits, it would have been an altogether different circumstance. It ends up in a settlement. Therefore, the complaint

loses its efficacy to project any legal lacunae in future, as the Apex Court in the case of **GIMPEX PRIVATE LIMITED v. MANOJ GOEL**<sup>2</sup> holds as follows:

"... .."

**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."*

*(Emphasis supplied)*

The Apex Court observes that a settlement agreement subsumes the original complaint and further observes that dishonor of cheques pursuant to a settlement agreement would then give rise to a fresh cause of action attracting both civil and criminal laws.

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<sup>2</sup> (2022) 11 SCC 705

9. In the case at hand, the learned Magistrate had reserved liberty to invoke Section 421 of the Cr.P.C., No fault can be found with the said order. The order of attachment upon a wrong address is also corrected by the concerned Court in terms of its order dated 22-02-2023 which reads as follows:

"22.2.2023

*Due to oversight, in the cause-title of the judgement, the Accused No.1 name is wrongly mentioned. Therefore, the court has suo-motto corrected the cause title of the judgment.*

*XXXIV ACMM, Bengaluru*

*Complainant present, Accused present. Accused submitted the DD. of Rs.10 lakhs in the name of Complainant. The Complainant refused to take the D.D. and submits that as per the joint memo, if, entire balance amount is to be paid by the Accused, then, he will receive the amount.*

*2. The learned counsel for Complainant furnished property details of the Accused No.2, wherein Sy.No.37/27. Sy.No. 37/17 and Sy.No.38 total measuring 2 acres 30 guntas are standing in the name of Accused No.2. ~~who is the Director~~ by name M.J. Shantharama, who is the Director of Accused company i.e., Valdel Retail Pvt. Ltd. Company and further learned Counsel for Complainant prayed for attachment of the above said property for recovery of balance amount.*

*3. As per the joint memo, Accused is undertake and agreed to pay the settled amount on or before 16.1.2023 by way of D.D. The total settled amount is Rs.3,05,37,671/- and after deducting the T.D.S. of Rs.5,53,767/-, the Accused has to be paid Rs.2,99,83,904/- to the Complainant on or before 16.1.2023. But, the Accused has failed to comply the compromise terms. Therefore, issue notice for attachment of above said property if, proper PF paid.*

4. Sri A.V.T. advocate has filed vakalath for one S.Pradeep Kumar, who is authorized signatory of M/s. Valdel Real Estate Pvt Ltd. Company. The learned counsel for authorized person filed application that, Highground police have come to attach the property of above said company in the present case. The authorized signatory Mr. Pradeep Kumar has filed affidavit that, they have engaged in the business of real estate and infrastructure development since from 13 years in the name of M/s. Valdel Real Estate Pvt. Ltd. and said company had taken the office space in the address of office No.27, K.C.N. Towers, Race Course Road, Bengaluru -25 and said office is located in the ground floor out of total area of 5000 sqft. Office space, 4950 sq.ft. of office belongs to M/s. Valdel Real Estate Pvt. Ltd. It is further stated that on 21.2.2023 High Ground police officers arrived their office stating that a attachment warrant of movable was issued against M/s.Valdel Retail Pvt. Ltd in C.C.No.52590/2022 and start to seizing the movable owned by their company assuming that it is to be the office of Accused i.e., M/s. Valdel Retail Pvt. Ltd. It is further submitted that their company is nowhere concerned to the Accused company and their company is different and Accused is different. Therefore, he prayed in the affidavit that restrain the police officer from seizing/attaching the movables of their company.

**5. It is reported by the Highground Police Inspector that, as per the warrant they have executed and prepared the Spot Panchanama of Valdel Retail Pvt. Ltd. In the said panchanama the address of the company is mentioned as 'No.27, Ground Floor, KCN Towers, Race Course Road. As per the cause title of the complaint, the address is correct. In the affidavit, the authorized signatory stated that, their office name is M/s. Valdel Real Estate Pvt. Ltd. which is situated at same address.**

**6. On perusal of the affidavit of authorized signatory of M/s. Valdel Real Estate Pvt. Ltd., company and report and panchanama furnished by the Police Inspector, Highground police station, Bengaluru, it is appears that High-ground police have going to seize or attach the movables of said company without verifying the Accused company. Therefore, issue show- cause**

***notice to the concerned police officer of High-ground police station with this regard.***

*For report call on 05.04.2023.*

*Sd/- 22/2/23  
(PARVEEN A BANKAPUR)  
XXXIV ACMM, Bengaluru."*

*(Emphasis added)*

Therefore, none of the submissions of the learned counsel for the petitioner to somehow escape the clutches of law is acceptable. There can be no qualm about the principles laid down by the Apex Court in the judgment relied upon by the learned senior counsel for the petitioner in the case of **ANEETA HADA** (*supra*) or even **HIMANSHU v. B.SHIVAMURTHY**<sup>3</sup> which follows **ANEETA HADA**. A bleak argument is projected by the learned senior counsel for the petitioner that a decree passed by the Court without jurisdiction is a nullity and invalid. Again there can be no qualm about the said principle, but the argument is so bleak, to even merit any consideration as the present proceeding does not suffer from want of jurisdiction *qua* any Court. The proceeding is initiated under Section 138 of the Act and non-compliance of it is also initiated

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<sup>3</sup> (2019)3 SCC 797

before the concerned Court under Section 421 of the Cr.P.C. The judgments relied on to buttress the aforesaid bleak submissions, are all inapplicable to the facts of the case. It is rather surprising that the accused who does not get away on the merit of the matter, gets away on account of a settlement, roams free without adhering to the conditions of the settlement and when the cup of woe comes to the brim by orders of attachment, knocks at the doors of this Court projecting hyper-technical grounds of interference. It is in such cases, the criminal proceedings should be restored if the accused do not adhere to the settlement and the intention is only to dodge the issue after settlement. Since it is a petition preferred by the accused, this Court is holding its hands in making any further observations.

10. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected. Interim order, if any subsisting, stands dissolved.

Consequently, I.A.No.2 of 2023 also stands disposed.

**Sd/-  
JUDGE**

bkp/CT:MJ