IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.12169 OF 2023 (GM-RES)

BETWEEN:

MR. HEMACHANDRA M.KUPPALLI
S/O LATE K.B.MANAPPA
AGED ABOUT 80 YEARS
R/AT P.O. BOX NO.60515
PALO ALTO, CA 94306, USA

REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER
MISS UMA RAM
D/O LATE B.R.RAM
AGED ABOUT 79 YEARS
R/AT NO.27/2, 1ST MAIN
JAYAMAHAL EXTENSION
BENGALURU – 560 046.

... PETITIONER

(BY SRI P.P.HEDGE, SENIOR ADVOCATE FOR
SMT. SHARADI S.SHETTY, ADVOCATE)

AND:

1 . M/S R.B.GREEN FIELD
AGRO INFRA PVT LTD.,
NO.801/1, 1ST FLOOR, 3RD MAIN
7TH CROSS, GANGANAGAR
BENGALURU – 560 032.

REPRESENTED BY ITS PROPRIETOR AND
AUTHORISED SIGNATORY
MR. RAKSHITH
S/O BHASKAR
AGED ABOUT 35 YEARS
R/AT NO.217, STERLING ORCHARD
4TH FLOOR, 5TH CROSS
RAJMAHAL, VILAS
RMV EXTENSION,
SADASHIVNAGAR
BENGALURU – 560 080.

2 . MR. RAKSHITH
S/O BHASKAR
AGED ABOUT 35 YEARS
R/AT NO.217, STERLING ORCHARD
4TH FLOOR, 5TH CROSS,
RAJMAHAL, VILAS
RMV EXTENSION
SADASHIVNAGAR
BENGALURU – 560 080.

3 . DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
KARNATAKA STATE POLICE
HEADQUARTERS NO.2
NRUPATUNGA ROAD
BENGALURU – 560 001.

4 . COMMISSIONER OF POLICE
ALI ASKER ROAD
BENGALURU – 560 001.

5 . INSPECTOR OF POLICE
J.C.NAGAR POLICE STATION
JAYAMAHAL MAIN ROAD
J.C.NAGAR

BENGALURU – 560 006.

... RESPONDENTS

(BY SMT. K.P.YASHODHA, HCGP FOR R-3 TO R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO ISSUE WRIT FOR EXPEDITIOUS DISPOSAL OF EXECUTION CASE NO.640/2017 ON THE FILE OF CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-57) VIDE ANNEXURE-E.

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

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus for expeditious disposal of Execution Case No.640 of 2017 pending before the City Civil and Sessions Judge, Bengaluru and has also sought further slew of prayers including restoration of the order of conviction and sentence dated 26-08-2015 passed against the respondent No.1/accused No.2 in C.C.No.15698 of 2014 by the XXI Additional Chief Metropolitan Magistrate, Bengaluru.

2. Facts adumbrated are as follows:-

The petitioner is the complainant and respondent No.1 is accused No.2. The 1st respondent is the firm represented by its proprietor the 2nd respondent. For the sake of convenience both these respondents would be referred to as 'respondent' in this order. Both the petitioner and the respondent have a transaction and the transaction leads to issuance of a cheque by the respondent in favour of the petitioner for an amount of ₹49/- lakhs drawn on Axis Bank Limited. The cheque when presented for realization was dishonoured for want of sufficient funds on 21-01-2014. The petitioner takes up legal proceedings against the respondent/accused before the learned Magistrate invoking Section 200 of the Cr.P.C., for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short). The learned Magistrate by order dated 26-08-2015 convicts the respondent in C.C.No.15698 of 2014 holding him to be guilty of the offence punishable under Section 138 of the Act and sentences him to pay a fine of ₹29,10,000/- and in default to undergo simple imprisonment for a period of ten months. It was further ordered that a sum of

₹29,00,000/- was to be paid to the complainant by way of compensation under Section 357 of the Cr.P.C., out of the fine amount.

3. The respondent immediately prefers an appeal before the Principal City Civil and Sessions Judge at Bengaluru invoking the provisions under Section 374 of the Cr.P.C., in Criminal Appeal No.1216 of 2015. During the pendency of the appeal, the Court refers the matter to the Lok Adalat for settlement of dispute between the petitioner and the respondent on 05-05-2016. The matter gets settled before the Lok Adalat on that day and an award is drawn up by the Lok Adalat whereby the accused undertook to pay sum of ₹29,00,000/- in installments, failing which the petitioner was at liberty to recover ₹30,00,000/- with 12% interest from the date of the award. The accused fails to make any payment or fails to adhere to the conditions of settlement. The petitioner then files an execution petition before the concerned Court in Execution Case No.640 of 2017 on 03-03-2017 and the present writ petition is preferred on 07-06-2023, 6 years after filing of the execution case alleging that there is no progress in the execution case. Therefore,

a direction to the concerned Court to expedite the execution case and secure the presence of the respondents 1 and 2 is sought. The matter was heard, reserved and posted for its pronouncement on 18-11-2023, at which point in time, it was noticed that the 2nd respondent though had been absconding, effort to serve him was not directed to be made. Therefore, this Court on 18-11-2023 had passed the following order:

> *"The matter was heard, reserved and is also listed for pronouncement of order today. Notice was not issued to the accused in C.C.15698 of 2014. Though, the accused has been evading the process of law for the last 6 years and no NBWs issued against him by the concerned Court are executed, as every attempt of execution has been returned as addressee left, in those circumstances, hearing or issuing notice to the accused was in the considered view of the Court an exercise in futility. But then, since the conviction has been set aside on account of a settlement between the petitioner and the accused before the Lok Adalath, this Court thought it fit to make an attempt to serve on the accused.*
>
> *Therefore, the order is not pronounced, but the matter is directed to be listed for further hearing treating it as heard in part, to be heard in the event the accused would appear before the Court.*
>
> *The petitioner shall serve the respondents 1 and 2 by way of hand summons and file an acknowledgement before this Court.*
>
> *Post the matter immediately after service of notice."*

Again the matter was listed on 01-02-2024 and two more weeks time was granted to do the needful. On 16-02-2024 the learned counsel for the petitioner files an affidavit that the 2nd respondent is absconding and he is unable to serve him. In the light of the affidavit, respondents 1 and 2 are taken as served.

4. Heard Sri P.P. Hedge, learned senior counsel appearing for the petitioner and Smt. K.P.Yashodha, leaned High Court Government Pleader for official respondents.

5. The learned senior counsel Sri P.P. Hegde appearing for the petitioner would vehemently contend that this is a tragic case where the petitioner/complainant who has in his favour an order of conviction against the respondent is referred for settlement. Bona fide believing that the respondent would abide by the terms of settlement, he settles the issue before the Lok Adalat. The conviction recorded by the learned Magistrate is set aside on the ground of settlement. 6 years have passed by, but no fruit of settlement has fallen to the share of the petitioner. He would contend that even the executing Court for the last 6 years has been

trying to secure the presence of the accused and nothing fruitful has happened as no warrant has been executed and even the arrest warrant issued has not even been executed by the jurisdictional police.

6. On the other hand, the learned High Court Government Pleader would seek to plead that there are no instructions secured in the case at hand with regard to the execution of warrant against the respondent as the State is not a party to these proceedings. The remedy of the petitioner lies elsewhere.

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

8. The transaction between the petitioner and the respondent is a matter of record. Towards the said transaction a cheque bearing No.009886 for a sum of ₹49,00,000/- drawn on Axis Bank was issued by the respondent in favour of the petitioner. The petitioner presents the said cheque before the Bank upon which it

had been returned with the endorsement "funds insufficient". Proceedings under Section 138 of the Act were taken up by the petitioner against the respondent. The concerned Court i.e., the learned Magistrate in terms of the judgment dated 26-08-2015 convicts the respondent for offence punishable under Section 138 of the Act by the following order:

> *"23.* ***POINT No.3:*** *To this point, I made the following:*
>
> ***ORDER***
>
> ***The accused no. 2 is convicted U/ Sec. 255 (2) of Cr.PC for the offence punishable U/Sec 138 of N.I Act.***
>
> ***The accused is sentenced to pay fine amount of Rs. 29,10,000/- (Rupees Forty Nine Lakh Ten thousand only). In default to undergo simple imprisonment for a period of ten months.***
>
> ***Out of the total fine amount of Rs.29,10,000/- a sum of Rs.29,00,000/- is ordered to be paid to the complainant by way of compensation U/Sec.357 of Cr.P.C., and the balance amount of Rs. 10,000/- shall be remitted to the State.***
>
> ***The bail bond of the accused no.2 stands cancelled.***
>
> ***The accused no. 1 is acquitted U/Sec. 255(1) of Cr.P.C for the offence punishable U/Sec 138 of N.I Act.***
>
> ***The bail bond of the accused no.1 stands cancelled.*** *(sic)"*
>
> *(Emphasis supplied)*

This is called in question by the respondent/accused in Criminal Appeal No.1216 of 2015 before the learned Sessions Judge. During the pendency of the appeal and when the matter was set down for final arguments, a joint memo is filed before the concerned Court. The joint memo was allowed and the appeal was referred to the Lok Adalat for settlement. On the very day, the settlement was drawn and an award was passed by the Lok Adalat recording the terms of settlement and the award passed by the Lok Adalat reads as follows:

> ***"AWARD***
>
> ***The dispute between the parties in Crl.A.1216/2015 on the file of CCH 57, Bengaluru City having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, the following award is passed in terms of the settlement:***
>
> ***Criminal Appeal No:1216/2015 is disposed off in terms of compromise petition. Judgment and order of sentence dt.26.08.2015 in CC No.15698/2014 on the file of XXI-Addl. Chief Metropolitan Magistrate, Bengaluru City is set aside. Accused is acquitted for the offence u/s.138 of NI Act. Accused shall pay Rs.29,00,000/- on or before 02.11.2016 i.e., Rs.3,00,000 on or before 01.06.2016, Rs.3,00,000 on or before 01.07.2016, Rs.3,00,000 on or before 01.08.2016, Rs.3,00,000 on or before 01.09.2016, Rs.6,00,000 on or before 01.10.2016, Rs.5,18,000 on or before 02.11.2016,***

> ***in favour of complainant, failing which complainant is at liberty to recover of Rs 30,00,000/- with 12% interest from the date of award. Complainant shall withdraw amount of Rs.5,82,000/- deposited by Accused before trial court.***
>
> *The parties are informed that the court fee, if any paid by any of them shall be refunded."*
>
> *(Emphasis supplied)*

In terms of the aforesaid award, the criminal appeal is disposed of; the judgment of conviction and order of sentence are set aside; the accused is acquitted of the offence under the Act and later the terms are drawn. The liberty that was reserved to the complainant in the event the accused would fail to adhere to the terms of settlement is to recover the amount with 12% interest from the date of award. The deposit that was made at the time of admission of the appeal was permitted to be withdrawn by the complainant.

9. Here begins the trauma of the complainant. The respondent deviates from the terms of settlement and does not pay a penny to the petitioner which brings the petitioner to file an execution petition in Execution Case No.640 of 2017, as in law, an award of the Lok Adalat is said to be a decree which is executable. Therefore, execution proceedings were initiated by the

petitioner/complainant. For the last 6 years securing presence of the accused/respondent has been a herculean task, despite issuing arrest warrant and the shara indicates that arrest warrant could not be executed as the addressee has left. Therefore, the respondent/accused has been dodging payment despite the sword of conviction which was hanging on his head being taken away on account of the settlement before the Lok Adalat. In the light of passage of 6 years, the petitioner has knocked the doors of this Court at this juncture seeking the following prayer:

> *"WHEREFORE it is prayed that this Hon'ble Court be pleased to*
>
> ***1.*** *Issue a writ of mandamus for expeditious disposal of Execution Case No.640/2017 on the file of City Civil & Sessions Judge at Bengaluru (CCH-57) vide* ***Annexure 'E';***
>
> *2. Issue a writ of mandamus or any other appropriate orders or directions to Respondent nos. 3 to 5 to arrest and cause production of Respondent nos.1 and 2 before the City Civil & Sessions Judge at Bengaluru (CCH-57) by executing the arrest warrant issued in Execution Case No.640/2017 vide* ***Annexure 'E'****;*
>
> ***3. In the event of respondents 1 and 2, failing to satisfy the award within the time limit that may be fixed by this Hon'ble Court, it is prayed that this Hon'ble Court be pleased to issue appropriate writ/order for restoration of the judgement of conviction and sentence dated 26-08-2015 passed in C.C.No.15698/2014 on the***

file of XXI Additional Chief Metropolitan Magistrate at Bengaluru vide Annexure 'A' by recalling the settlement arrived before the Lok Adalat as per Award dated 05-05-2016 passed by Lok Adalat in Criminal Appeal No.1216/2015 on the file of City Civil and Sessions Judge, Bengaluru(CCH-57) vide Annexure 'C'; And issue appropriate writs to the trial court to execute the conviction warrant by directing the police/respondent nos. 3 to 5 to assist in executing the conviction warrant and submit compliance report for this Hon'ble Court.

4. ***Grant such other and further reliefs as this Hon'ble Court deems fit to grant under the circumstances of the case, in the interest of justice."***

(Emphasis supplied)

The aforesaid prayers are sought in a piquant circumstance that a complainant/victim who has lost money and who also has a judgment of conviction against the accused in his favour offers himself for a settlement before the Lok Adalat. The conviction goes away on account of such settlement on certain terms and conditions. Not a single term or condition is adhered to by the accused. Therefore, for the sake of setting aside the conviction, settlement has been entered into, and the accused with impunity is dodging the clutches of law for the last 6 years. No doubt the award of the Lok Adalat is an executable decree in terms of law.

Therefore, the petitioner prefers an execution case which is also pending consideration for the last 6 years. In these circumstances, the aforesaid prayers are sought. Whether they are grantable is what requires to be considered.

10. The first of the prayers is for a direction to the executing Court for expeditious disposal of the case before it. The other prayer is restoration of the order of conviction. The award of the Lok Adalat, as is held by the Apex Court in the case of ***K.N. GOVINDAN KUTTY MENON v. C.D. SHAJI – (2012) 2 SCC 51***, is akin to a decree passed by the civil Court which is executable. There can be no qualm about the principle enunciated by the Apex Court in the case of ***K.N.GOVINDAN KUTTY MENON*** *(supra)* which has been consistently followed. The case at hand projects a different circumstance. The difference in circumstance is the conduct of the accused. The matter was referred to the Lok Adalat on account of a joint memo being filed by the complainant and the accused.

11. The Court need not accept the joint memo and refer the matter to the Lok Adalat as the matter was at the stage of arguments. But, the Court accepts the joint memo and sends the matter for settlement to the Lok Adalat. At that juncture the Court ought to have noticed whether there has been compliance with the judgment of the Apex Court in the case of ***DAMODAR S.PRABHU v. SAYED BABALAL.H***[1] wherein three Judge Bench of the Apex Court laid down certain guidelines with regard to the settlement in a dishonour case for offence punishable under Section 138 of the Act. The Apex Court has held as follows:

"…. …. …. ….

> ***8.*** *Before examining the guidelines proposed by the learned Attorney General, it would be useful to clarify the position relating to the compounding of offences under the Negotiable Instruments Act, 1881. Even before the insertion of Section 147 in the Act (by way of an amendment in 2002) some High Courts had permitted the compounding of the offence contemplated by Section 138 during the later stages of litigation. In fact, in O.P. Dholakia v. State of Haryana [(2000) 1 SCC 762 : 2000 SCC (Cri) 310] a Division Bench of this Court had permitted the compounding of the offence even though the petitioner's conviction had been upheld by all the three designated forums. After noting that the petitioner had already entered into a compromise with the complainant, the Bench had rejected the State's argument that this Court need not interfere with the conviction and sentence*

[1] ***(2010) 5 SCC 663***

since it was open to the parties to enter into a compromise at an earlier stage and that they had not done so. The Bench had observed: (SCC p. 763, para 3)

"3. … taking into consideration the nature of offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission, in the peculiar facts and circumstances of the present case, to compound."

Similar reliefs were granted in the orders reported as Sivasankaran v. State of Kerala [(2002) 8 SCC 164 : 2002 SCC (Cri) 1872] , Kishore Kumar v. J.K. Corpn. Ltd. [(2004) 13 SCC 494 : (2006) 1 SCC (Cri) 348] and Sailesh Shyam Parsekar v. Baban [(2005) 4 SCC 162 : 2005 SCC (Cri) 1321] among other cases.

9. *As mentioned above, the Negotiable Instruments Act, 1881 was amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which inserted a specific provision i.e. Section 147 "to make the offences under the Act compoundable". We can refer to the following extract from the Statement of Objects and Reasons attached to the 2002 amendment which is self-explanatory:*

"Prefatory Note—Statement of Objects and Reasons.—The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure

prescribed for the courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act."

(emphasis supplied)

In order to address the deficiencies referred to above, Section 10 of the 2002 amendment inserted Sections 143, 144, 145, 146 and 147 into the Act, which deal with aspects such as the power of the court to try cases summarily (Section 143), mode of service of summons (Section 144), evidence on affidavit (Section 145), bank's slip to be considered as prima facie evidence of certain facts (Section 146) and offences under the Act to be compoundable (Section 147).

10. *At present, we are of course concerned with Section 147 of the Act, which reads as follows:*

"147. Offences to be compoundable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

At this point, it would be apt to clarify that in view of the non obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter "CrPC") will not be applicable in the strict sense since the latter is meant for the specified offences under the Penal Code, 1860.

11. *So far as CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section (2) of the*

said section specifies the offences which are compoundable with the leave of the court.

12. *Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that "No offence shall be compounded except as provided by this section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause.*

13. *In Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd. [(2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351] this Court had examined "whether an offence punishable under Section 138 of the Act which is a special law can be compounded". After taking note of a divergence of views in past decisions, this Court took the following position (C.K. Thakker, J. at SCC p. 310, para 17):*

"17. … This provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002)."

In the same decision, the Court had also noted: (SCC p. 308, para 11)

"11. … Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case."

14. *It would also be pertinent to refer to this Court's decision in R. Rajeshwari v. H.N. Jagadish [(2008) 4 SCC 82 : (2008) 2 SCC (Cri) 186] wherein the following observations were made (S.B. Sinha, J. at SCC p. 85, para 12):*

"12. Negotiable Instruments Act is a special Act. Section 147 of the Act provides for a non obstante clause, stating:

'147. Offences to be compoundable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.'

Indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the said Act. Stricto sensu, however, the table appended to Section 320 of the Code of Criminal Procedure is not attracted as the provisions mentioned therein refer only to provisions of the Penal Code and none other."

15. *The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as K.M. Ibrahim v. K.P. Mohammed [(2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262] wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):*

"13. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. …

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

16. *It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from: K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444]:*

"17.2. Compounding of offences.—A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the court."

17. *In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from: Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act—*

Tackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5]:

"… Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

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 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.*

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.

20. *It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate, First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.*

- *In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) CrPC; thereafter a revision to the High Court under Sections 397/401 CrPC and finally a petition before the Supreme Court, seeking special leave to appeal under Section 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.*

- *In the case of acquittal by JMFC, the complainant could appeal to the High Court under Section 378(4) CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.*

21. *With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:*

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

22. Let it also be clarified that any costs imposed in accordance with these Guidelines should be deposited with the Legal Services Authority operating at the level of the court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Session, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.

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 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.

24. We are also conscious of the view that the judicial endorsement of the abovequoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. *The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."*

(Emphasis supplied)

The Apex Court while delineating every character of the settlement being arrived at by the accused particularly at the stage of

conviction records certain guidelines to be followed by the concerned Court while recording compounding of offence. One such direction is that if the application for compounding is made before the concerned Court or the high Court in revision or appeal, such compounding should be allowed only on a condition that the accused pays 15% of the cheque amount by way of costs. This would be for the reason that the accused demonstrates his bona fides in arriving at a settlement with the complainant. Certain other conditions are also issued by the Apex Court. The Apex Court holds that it should be mandatory that the aforesaid amount is made a condition precedent for even considering the application for compounding of the offence.

12. If the finding of the Apex Court or the guidelines laid down therein are considered *qua* the facts obtaining in the case at hand, what would emerge is that the very reference of the case to the Lok Adalat is erroneous, as there is nothing recorded by the concerned Court that the accused has deposited 20% fine amount as a condition precedent for referring the matter to the Lok Adalat. The Court does not record any such deposit being made. Therefore,

the very reference to the Lok Adalat runs counter to the judgment of the Apex Court *supra*. This is the first threshold of illegality in the reference being made to the Lok Adalat. What has driven the petitioner to this Court is the trauma that is generated in the aftermath of the award. It is no doubt true that the compromise in terms of law can be executed, as a decree that is to be executed would also include proceedings under Section 431 of the CrPC. To enforce such compromise, the Court is empowered to issue fine levy warrant or even arrest warrant to secure the presence of the accused for executing the compromise.

13. All the above stages are over in the case at hand. Non-bailable warrant, fine levy warrant and arrest warrant have been issued for the last 6 years and nothing fruitful has happened. An accused who is convicted for an offence is moving free and the victim/complainant who holds a decree is struggling to get his money arising out of such compromise. What is discernible from the aforesaid action of the accused after getting away with the conviction is that, he had no intention to adhere to the terms of settlement, and settlement is arrived at before the Lok Adalat only

to get the hanging sword of conviction on his head taken away. This would, on the face of it, amount to playing fraud on the Court, and if it is construed to be a fraud, the accused in getting the matter settled, it would unravel the settlement, as it is trite law that "***fraud unravels everything***" and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, should step in to consider such cases, to be a case of obtaining a decree/order of compromise by playing fraud and pass necessary orders in accordance with law. The accused, despite suffering an order of conviction, is dodging the clutches of law for the last 6 years, taking advantage of the compromise. Therefore, on the aforesaid ground of fraud as aforesaid being played by the respondent/accused, the proceedings before the Court of Sessions requires to be restored, failing which, the petitioner/victim would be put to insurmountable injustice.

15. Whenever a Court, particularly in cases where the accused who is convicted offers himself for settlement of the dispute and the judgment and conviction is set aside on account of such compromise, those Courts shall make it mandatory to observe

that the deviation of terms of the compromise will automatically efface of the compromise and the effect of it will be restoration of proceedings on the original side, in the manner known to law, failing which, the accused who get away with conviction on compromise like in the case at hand, take advantage of the laborious rigmarole of procedure of getting the compromise decree executed and bring about a situation as is found in the case at hand.

16. For all the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is allowed in part.

(ii) The award dated 05-05-2016 passed by the Lok Adalat on a reference by the learned LVI Additional City Civil and Sessions Judge, Bengaluru City in Criminal Appeal No.1216 of 2015 stands quashed.

(iii) The proceedings before the learned LVI Additional City Civil and Sessions Judge, Bengaluru City in Criminal Appeal No.1216 of 2015 stands restored.

(iv) The learned LVI Additional City Civil and Sessions Judge, Bengaluru City shall regulate the procedure to consider the appeal on its merit, and pass appropriate orders, in accordance with law.

Sd/-
JUDGE

BKP
CT:SS