

**IN THE COURT OF THE LXXII ADDL. CITY CIVIL
& SESSIONS JUDGE AT MAYO HALL
BENGALURU, (CCH-73)**

Present:

**Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.,)**

LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 24th day of January, 2022.

Crl. Appeal. No.25057/2021

**Appellant/
Accused:-**

Mr. G Sekhar,
S/o. Gundan,
Aged about 58 years,
No. 328, 4th Main,
'A' Cross, 1st Floor,
Bangalore-71.
Present Address: #560,
6th Main, BDA quarters,
Bengaluru-71

[By Sri. Sachin Nagaraj -Adv]

V/s

**Respondent/
Complainant:**

Mr. Sathish Kumar,
S/o Murgesh,
Aged about 29 years,
R/at No. 96, 3rd Main,
3rd Cross, A.R Avenue Road,
New Thippasandra,
Bengaluru – 75.

[By Sri. SUA- Adv]

JUDGMENT

This Appeal is preferred by the Appellant/ Accused U/Sec. 374(3) of Cr.P.C, being aggrieved by the Judgment of conviction passed by the XXXIII Addl. CMM, Mayohall Unit, Bangalore in CC.No.50721 of 2015, dtd. 23.03.2021, convicting the Appellant for the offence punishable U/Sec. 138 of NI Act, thereby sentencing to pay fine of Rs.4,05,000/-. In default to undergo Simple Imprisonment for a period of 6 months. Further directed to pay an amount of Rs.4,00,000/-, out of the fine amount, to the Complainant, as compensation U/Sec 357(1) of CrPC,.

2. The Brief facts leading to filing of the present appeal are:

The present Respondent filed a Complaint U/Sec. 200 of Cr.P.C. against the present Appellant, alleging that, the Appellant had borrowed a sum of Rs.3,50,000/- from him on 10.03.2014, as a handloan and has issued a post dated Cheque bearing No.175581, dtd.29.09.2014 for Rs.3,50,000/-, drawn on the Union Bank of India,

Domlur Layout, Bengaluru, in his favour, towards the repayment of the said handloan amount. On repeated request to the Appellant to repay the said handloan amount, the Appellant instructed him to present the said Cheque, for its encashment. Accordingly, he presented the said Cheque through his banker Syndicate Bank, Indiranagar, Bengaluru, for its encashment. But the said Cheque has returned unencashed with an endorsement 'Funds Insufficient' on 01.10.2014. Thereafter he got issued a statutory demand notice, through his counsel on 29.10.2014 by RPAD, which was received by the Appellant on 31.10.2014. Neither the Appellant has complied, nor replied the said Notice.

On completion of the stipulated period required under the statute, the Respondent was constrained to file the present Complaint against the Appellant/Accused for the offence punishable U/Sec.138 of N.I.Act.

3. *On being satisfied the Trial Court has issued summons U/Sec.204 of Cr.P.C., to the Appellant / Accused on 02.02.2015. The Appellant appeared before the Trial Court on 16.12.2016 and he was*

enlarged on bail. Thereafter on request of both the parties, the matter was referred to the Lok-Adalath, wherein the matter was settled inbetween the parties and parties have filed a Joint Memo on 29.06.2018. There is a clause in the Joint Memo that incase of the default on the part of the Appellant/ Accused, in compliance of the Joint Memo, then the Complainant is at liberty to reopen the case and proceed against the case, as per law. On the basis of the said Joint Memo the matter was closed.

Since the Appellant / Accused did not comply with the undertaking given by him to repay the amount, under the Joint Memo. The Complainant filed an application to reopen the case. Accordingly, the case was reopened by the Trial Court, as per its orders dtd.29.06.2018.

On reopening the case NBW was issued against the Accused. The Accused was produced before the Trial Court under NBW on 14.01.2019, wherein he was released on bail.

Plea/ Substance of Accusation of the Appellant/ Accused was recorded by the Trial Court on 21.01.2019, wherein the Appellant has pleaded not guilty and claims to be tried.

4. *The Complainant in order to prove his case got himself examined as P.W.1 and got marked 5-documents as Ex.P.1 to Ex.P.5. PW1 was cross examined on behalf of the Appellant / Accused on 18.08.2019, 13.11.2019 and 22.02.2021.*

Statement of the Accused U/Sec. 313 of Cr.P.C., was recorded by the Trial Court on 20.11.2019. Appellant/Accused did not lead his Defence Evidence.

On hearing both the sides, the Trial Court has passed the Judgment, convicting the Appellant/Accused for the offence punishable U/Sec. 138 of N.I. Act on 23.03.2021. Hence, the Appellant is before this Court, being aggrieved by the said Judgment of conviction.

5. *The Appellant has preferred this Appeal. On preferring the Appeal by the Appellant/Accused, this Court has suspended the sentence under appeal, for a period of three months, initially on 17.04.2021. Notice of the Appeal memo and I.A.No.1/2021 was issued to the Respondent and TCR were called-for.*

Respondent set-in his appearance on 29.12.2021. TCR were secured on 08.07.2021.

6. *Heard the Arguments of the Learned Counsels for the Appellant/Accused and the Respondent/ Complaint.*

The Learned Counsel for the Appellant / Accused has relied upon 12 decisions viz., a) in Crl. Appeal No.1068/2021; b) in Crl. Petition No.3157/2020; c) CT Cases 636476/2016; d) in SLP (Crl.) No.8641/2018; e) in Crl. Rev. P. 500/2014; f) in Crl. Appeal No.1020/2010; g) in Crl. Application No.4694/2008; h) Crl. Appeal No.2045/2008; i) in Appeal (Crl.) 518 of 2006; j) in Appeal (Crl.) 1410/2007; k) in Appeal (Crl.) 1012 of 1999; l) in Appeal (Crl.) 1253/2002; and m) in Appeal (Crl.) 91/2002.

7. *The Appellant has preferred this appeal on the following grounds:*

Grounds of Appeal:

a) The Trial Court has gravely erred in convicting the Appellant for the offence punishable U/Sec. 138 of N.I. Act, which is manifestly erroneous

and opposed to the facts and circumstances of the case;

b) The Trial Court has miserably failed to reopen the case and to proceed with it, as the parties to the case had filed a Joint Memo;

c) The Trial Court has failed to follow the procedure prescribed, on accepting the Joint Memo;

d) The Trial Court has failed to appreciate the oral and documentary evidence on record, in a proper and perspective manner;

e) The Trial Court has failed to consider that, the Respondent has failed to prove that, the debt is legally enforceable debt, as required U/Sec.138 of NI Act;

f) The Trial Court has unjustifiably restored the case and has proceeded with. The procedure followed by the Trial Court is against the Principles of Law.

g) The Trial Court ought to have consider that when the Award is passed by the Lok-Adalatha based on a compromise, such Award treated as decree capable of execution;

h) The Trial Court has failed to observe the guiding principles laid down by the Hon'ble Apex Court, in the case of Govindan Kutty Menon V/s C D Shaji, reported (2012) 2 SCC 51;

i) The Trial Court become funtus officio, when the Award is passed U/Sec.20(1)(i)(b), 20(1)(ii) of the

Legal Services Authority Act (Act 39/1987); and the Award is an executable decree in the high of law as per Sec.21 of the Act.

Hence, prayed to allow the said appeal and setaside the Judgment of Conviction passed by the Trial Court.

8. *Following points arise for my consideration;*

1. Whether the Appellant / Accused shows that, the procedure adopted by the Trial Court, after the matter is settled by filing a Joint Memo U/Secs. 20(1)(i)(b), 20(1)(ii) of the Legal Services Authority Act (Act 39/1987), is incorrect, resulting in vitiating the further proceedings taken up by the Trial Court?

2. Whether the Appellant/ Accused shows that the Order of Conviction and Sentence recorded by the Trial Court in CC.No.50721 of 2015, dtd.23.03.2021, deserves to be setaside, and thereby call for the interference of this Court?

3. What Order?

9. *My finding on the above points are as under:*

Point No.1 : In the Affirmative;

Point No.2 : In the Affirmative;

**Point No.3 : As per final order for
the following :**

REASONS

10. *The rank of parties will be referred to, as they were before the Trial Court.*

11. Point No.1:

The Learned Counsel for the Appellant / Accused contends that, the Trial Court had referred to the matter to the Lok-Adalath, as per the request made by the both the parties before it. And accordingly, the matter came to be settled before the Lok-Adalath inbetween the said parties, by filing a Joint Memo. On recording settlement, an Award is to be passed within the meaning of U/Secs. 20(1)(i)(b), 20(1)(ii) of the Legal Services Authority Act (Act 39/1987). On non compliance of the said Award, necessary steps are to be taken, as required by law. But the case cannot be reopened, as done by the Trial Court. The Learned Counsel for the Appellant has placed his reliance on two decisions viz.,

a) of the Hon'ble Supreme Court, in the case of M/s Gimpex Private Limited V/s Manoj Goel, reported in Crl. Appeal No.1068/2021,

wherein it is observed in Para Nos.38, 40 and 43, as under:-

“A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have PART C voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law.

40. *Thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed. It has been urged by Mr V Giri, learned Senior Counsel, and Ms Liz*

Mathew, learned counsel, that parallel prosecutions would not lead to a multiplicity of proceedings, as in the present case, both complaints are being tried by the same court. This may be true for the case before us, however, this Court in *Damodar S. Prabhu (supra)* and *Re: Expeditious Trial of Cases (supra)* has recognized multiplicity of complaints as one of the major reasons for delay in trial of cases under Section 138 of the NI Act and the consequent choking of the criminal justice system by a disproportionate number of Section 138 cases. While it is true that the trial in this case is before one court, that is not necessarily the ground reality in all cases. 41 At this stage, it may be necessary to dwell on the decision of this Court in Lalit Kumar Sharma v. State of Uttar Pradesh 28 and Arun Kumar v. Anita Mishra 29. In *Lalit Kumar Sharma (supra)*, a company, with two directors (Manish Arora and Ashish Narula), had obtained a loan for the amount of Rs.5,00,000/- and (2008) 5 SCC 638 (2020) 16 SCC 118 PART C drew two cheques in an equivalent amount in favour of the first respondent. The cheques were returned unpaid for “insufficiency of funds”. A complaint was instituted under Section 138 of the NI Act against the two directors. The appellants, who were also directors of the said company, were not signatories to the cheques and had not been made parties to the complaint.

During the pendency of the complaint, an agreement was entered into between Manish Arora, Ashish Narula and the complainant under which it was envisaged that if a cheque for Rs.5,02,050/- was issued, the complaint would be withdrawn. Manish Arora issued a cheque which was returned on presentation for insufficiency of funds. Meanwhile, Ashish Narula and the company entered into an agreement stating that the liability arising from the said transaction was of the director personally, and not of the company. Another complaint was filed on the basis of the return of the subsequent cheque, where Manish Arora and Ashish Narula and the appellants were made parties. In this backdrop, the Court noted that in respect of the first cheques, the appellants were not proceeded against and though a compromise was entered into between Manish Arora and Ashish Narula and the complainant, the complaint had not been withdrawn and the two directors had been found guilty of an offence under Section 138 of NI Act. Manish Arora had issued the second cheque in terms of the settlement between the parties. It was in this backdrop, that the Court observed:

“15. Evidently, therefore, the second cheque was issued in terms of the compromise. It did not create a new liability. As the compromise did not

fructify, the same cannot be said to have been issued towards payment of debt.

43. The above decision has been subsequently considered in a very recent decision of a two judge Bench in Arun Kumar v. Anita Mishra 30. In that case, a complaint was filed by the appellant under Section 138 against the respondent. The Judicial Magistrate, First Class, convicted and sentenced the respondent to six months' imprisonment and to a fine. During the pendency of the criminal appeal, a compromise was arrived at before the Lok Adalat in terms of which the respondent issued a post-dated cheque in favour of the appellant. The cheque was dishonoured on presentation and this led to the institution of a complaint under Section 138. The respondent filed an application for dismissal of the complaint. The application and a revision were dismissed. A petition under Section 482 CrPC thereafter was allowed by the High Court on the ground that the question of quashing the second complaint did not arise when the cheque was not issued in discharge of any debt or liability but on account of a settlement. Distinguishing the earlier judgment in Lalit Kumar Sharma (supra), the Court held:

“9. Lalit Kumar case [Lalit Kumar Sharma v. State of U.P., (2008) 5 SCC 638 : (2008) 2 SCC (Cri) 682] is distinguishable on facts, in that the cheque had not been issued in discharge

of any debt or liability of the company of which the accused were said to be the Directors. The cheque was found to have been issued for the purpose of arriving at a settlement.”

b) of the Hon’ble High Court of Karnataka, in the case of Ms. Shally M. Peter V/s M/s Banyan Projects India Pvt. Ltd., reported in Crl. Petition No.3157/2020, wherein it is observed in Para No.14, as under:-

It is interesting the note that the Bombay High Court itself has taken a different view. In a decision rendered by the Aurangabad Bench of the Bombay High Court, a learned single Judge in Vishwanath Ramakrishna Patil (supra), where a similar question was raised, opined as under:

“It is difficult to curtail this remedy merely because there is a revisional remedy available. The alternate remedy is no bar to invoke power under Article 227. What is required as to see the facts and circumstances of the case while entertaining such petition under Article 227 of the constitution and/or under section 482 of Criminal Procedure Code. The view therefore, as taken in both the cases V.K. Jain and Saket Gore, no way expressed total bar. If no case is made

out by the petitioner or the party to invoke the inherent power as contemplated under section 482 of Criminal Procedure Code and/or the discretionary or the supervisory power under article 227 of the constitution of India they may approach to the revisional court, against the order of issuance of process”.

12. *Admittedly both the parties have agreed to refer the matter to the Lok-Adalath; and on referring the matter to the Lok-Adalath, the matter was got settled by both the parties, wherein they have filed a Joint Memo; and on the basis of the said Joint Memo, the case was closed.*

13. *When the matter is referred to the Lok-Adalath, then Sec. 20 of the Legal Services Authorities Act (Act No. 39/1987) comes into play. And on filing of a Joint Memo, since the case is closed, by virtue of deeming provisions U/Sec. 21 of the Legal Services Authorities Act (Act No. 39/1987), the Order Passed by the Lok-Adalath, will become an award, within the meaning of Sec. 21 of the said Act.*

14. *On perusal of the Order sheet dated 10.02.2017, Joint Memo filed by the parties is accepted and the case is closed. Though the said Order Passed by the Lok-Adalath does not state, to pass an Award.*

*The making of Award is merely an Administrative act of incorporating the terms of the settlement or compromise agreed upon by the parties in the presence of the Lok-Adalath, in the form of an executable Order, under the signature and seal of the Lok-Adalath. Mere non mentioning of "Draw an Award" in the Order passed by the Lok-Adalath dated 10.02.2017, will not take away the effect, as provided U/Sec.21 of the Legal Services Authorities Act. I find force to my above view, as per the decision of **the Hon'ble Apex Court in the case of State of Punjab V/s Jalour Singh, reported in (2008) 2 SCC 660; as well as in the case of B. P. Moideen Seva Mandir V/S A. M. Kutty Hassan, reported in (2009) 2 SCC 198.***

15. *As per Sec. 21(2) of the Legal Services Authorities Act, the Award passed by the Lok-Adalath becomes final and binding on all the parties*

to the dispute, and no appeal shall lie any Court against the Award.

So as per the said provision of the law, firstly the Order Passed by the Lok-Adalath dated 10.02.2017, is final; and Secondly, the said Order is binding on the Complainant as well as the Accused.

16. The Learned Counsel for the Appellant would contend that the words used in the Joint Memo, as “In case of default, on the part of the accused in compliance of the Joint Memo, Complainant is at liberty to re-open the case and proceed against the accused as per law”. This does not mean to take up a new and denova proceedings against the Accused.

*17. As per the decision of **the Hon’ble High Court of Karnataka in the case of Sri. Somashekara Reddy V/s. G. S. Geetha, (Writ Petition 23520/2018 (GM- RES), dated of decision 07.02.2020)**, wherein it is observed in Para Nos. 22 to 32, as under;*

22. From the extracts of the compromise and the award passed in Yash's case (supra) and comparing the same to the

present case, it is seen that there is no such reservation of liberty to the complainant to invoke the provisions of Section 431 of Cr.P.C. in Yash's case, but, however, in the present case, there is such liberty reserved. It has specifically been agreed between the parties that the complainant can proceed under Section 431 Cr.P.C. in the event of the accused committing default in payment.

23. The very object and purpose of the LSA Act and creation of Lok-Adalat is to facilitate easy and fast settlement/resolution of disputes. Resolving of dispute does not only mean an agreement to settle the dispute but a complete finality as regards the dispute being achieved.

24. During criminal proceedings under Section 138 of N.I.Act, if the accused were to dishonestly state that the accused was agreeable for reference to Lok- Adalat, in furtherance of which the matter was referred to Lok-Adalat and a compromise being arrived at on certain terms in a dishonest manner. In that the accused even at that time knowing fully well that the accused would not adhere to the terms of compromise and thereafter the accused not performing his obligation would take up the contention that the only methodology

available to the complainant is execution of the compromise arrived at in the Lok-Adalat as a civil decree, thereby the accused would have successfully avoided a criminal prosecution, frustrated the complainant and left the complainant with no possibility or lesser possibility of recovering of the monies due to him, as he would have had under Section 138 of N.I.Act.

25. *While encouraging settlement through Lok-Adalat, it is also required that the interest of the parties are protected and no one misuses or abuses the process Lok-Adalat to harass the other or take undue advantage over the other. The integrity and efficacy of the proceedings before the Lok-Adalath are therefore to be maintained.*

26. *Proceedings under Section 138 of N.I.Act having been initiated and the compromise arrived at being in nature of compounding the offence, in the event of the terms of compromise involving executory terms, it would be required that it is executed and the terms agreed are enforced in terms of the Criminal Procedure Code since the proceedings were initiated under the Criminal Procedure Code. It is impermissible for the accused to contend*

that since the matter has been resolved or settled before the Lok-Adalat, the only option available to the complainant is enforcing the settlement by way of a execution of the award passed by the Lok-Adalat as a civil decree in accordance with Section 21 of LSA Act, more so, when the parties have agreed that on default the complainant can enforce the same in terms of Section 431 of Cr.P.C.

27. *This Court, in the circumstances, is of the considered opinion that the complainant who settles the matter before the Lok-Adalat can either seek to execute the settlement as a decree before a Civil Court or proceed against the defaulting accused as per the applicable provisions of the Cr.P.C. The manner of exercise of the option could depend on the terms contained in the compromise entered into before the Lok-Adalat. If there is a term agreed that the complainant can enforce the compromise on default by resorting to Section 431 of Cr.P.C., the complainant would be well within his right to do so. If there is no such term agreed, then the award passed by the Lok-Adalat can only be enforced as a Civil decree in terms of Section 21 of LSA Act.*

28. *Merely because the settlement was arrived at before the Lok-Adalat, it cannot be contended that the criminal proceedings have been converted into civil proceedings revoking the right of the complainant to enforce his or her rights in terms of the applicable criminal law. The dispute which was referred to the Lok-Adalat was one which was being adjudicated in a criminal proceeding, if not for the existence of that pending Criminal proceeding, there would have been nothing to refer to the Lok-Adalat.*

29. *The Lok-adalat system is a sui generis system which has been adopted in our country, more so with an intention to facilitate settlement of matters by employing Alternative Disputes Resolution System. The Lok-Adalat system is sanctified by the LSA Act. Though Lok-Adalat is constituted under the LSA Act, the LSA Act does not in actuality provide for the specific jurisdiction of the Lok-Adalat, except to state that any matter pending before any court can be referred to Lok-Adalat in order to explore the possibility of a settlement between the parties. Lok- Adalat can, therefore, entertain any proceeding pending before a*

court exercising civil or criminal jurisdiction. Therefore, I am of the considered opinion that the Lok-Adalat is a reflection of the matter which is referred to it, i.e., to say that when a civil matter is referred to Lok-Adalat, it exercises jurisdiction of a Civil Court. If Criminal matter is referred to Lok-Adalat, it exercises the jurisdiction of a Criminal Court insofar as settlement and or compounding of offences is concerned. The Lok- Adalat would not have any power to sentence a party. In essence, it can be said that Lok-Adalat, is an alter ego of a Court referring the matter to it, therefore, I am of the considered view that the Lok- Adalat would be in a position to record the settlement in terms of what has been arrived at by including the methodology of implementation of the settlement under the applicable substantive and procedural civil or criminal law. In criminal cases by allowing the parties to resort to the proceedings for execution of the settlement in terms of the Cr.P.C. including that under Section 431 of Cr.P.C.

30. It cannot be disputed that if a compromise had been arrived at de hors the Lok-Adalat proceedings, the provisions

of Section 431 of Cr.P.C, would have been applicable. Therefore, the finding of the Magistrate that since the settlement had been arrived at in Lok- Adalat proceedings and therefore, Section 431 of Cr.PC. was not available is not sustainable.

31. *In view of the above discussion the questions raised are answered as under 31.1. Depending on the terms of a compromise arrived at before the Lok-Adalat it can be enforced as a Civil decree or in terms of the applicable provisions of Cr.P.C. including that under Section 431 of Cr.P.C. if so provided in the compromise.*

31.2. In the event of a default of a compromise arrived at before the Lok-Adalat this Court or the Trial Court can on an application made by the Complainant set-aside the compromise arrived at before the Lok-Adalat, restore the complaint on its file and proceed with the complaint or enforce the compromise as per the terms of the compromise including by issuance of an FLW under Section 431 of the Cr.P.C.

32. *In view of the above, the order dated 7.6.2014 passed by the Civil Judge and JMFC, Bagepalli in C.C.No.578/2013 is set-aside, and C.C.No.578/2013 is restored to file. The Civil Judge and JMFC, Bagepalli is*

directed to consider the petition filed by the petitioner under Section 431 of Cr.PC., afresh after issuing notice to the accused-respondent within a period of six months from the date of receipt of the certified copy of this order.

Applying the above said principles of law, to the instant case at hand, wherein it is seen that there is a term in the Joint Memo arrived in between the complainant and the Accused, before the Lok-Adalath that, in case of default on the part of the Accused, to repay an amount of Rs. 2,00,000/- to the Complainant, then the Complainant can get re-open the case and proceed against the Accused.

This term in the Joint Memo, is to be read in consonance, with Sec. 431 of Cr.P.C.

18. *On Perusal of the Order Sheet of the Trial Court dated 29.06.2018, though the Trial Court has re-opened the case, but the Trial Court has issued NBW. This act of the Trial Court, is not as per the terms of the Joint Memo filed by the parties. The Trial Court, here ought to have issued FLW against the Accused, U/Sec. 431 of Cr.P.C.*

19. On Perusal of the Order Sheet of the Trial Court dated 14.01.2019 onwards, it is seen that the Trial Court on securing the Accused has went on with the Trial of the case, by recording Plea; recording the Evidence of the Complainant as PW.1; on completion of the Evidence from the side of Complainant, recording of statement of the Accused U/Sec. 313 of Cr.P.C; and recording the Order of Conviction. These acts of the Trial Court, is not in pari materia, with the Lok-Adalath, its benefits, Award, and its finality, as has been observed by **the Hon'ble Apex Court in the case of P. T. Thomas V/s. Thomas Job, reported in (2005) 6 SCC 478.**

20. As per the decision of **the Hon'ble Apex Court in the case of M/s Gimpex Pvt. Ltd. V/s. Manoj Goyal, reported in 2021 SCC Online SC 925, date of decision 08.10.2021,** wherein it is observed that,

“ 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.”

and held in Para No 45, as under:

“Based on the discussion above, in our opinion, once the compromise deed dated 12.03.2013 was agreed, the original complaint must be quashed and parties must proceed with the remedies available in law, under the settlement agreement.”

Applying the above said principles of law to the instant case at hand, when the Complainant and the Accused have arrived at settlement and have filed Joint Memo, then on non-compliance of the terms of the Joint Memo, the case cannot be re-opened and a denova Trial cannot be taken, for the following reasons:

Firstly, it would allow for the Accused to be prosecuted and undergo Trial, which in its Legal essence arise out of one underlined Legal Liability;

Secondly, the Accused would then face Criminal Liability for not just violation of the Original agreement of the transaction which had resulted, in

compromise before the Lok-Adalath, but also on taking a fresh Trial of the case, for its non-compliance;

Thirdly, instead of reducing Litigation and ensuring fast recovery of money, it would increase the burden of the Criminal Justice System where Judicial time is being spent, on adjudicating the lis, which is already settled before the Lok-Adalath; and

Fourthly, conducting the subsequent proceedings, on re-opening the case, will amount to nugate the benefits objects and attainment of finality of the Lok-Adalath Award.

21. *Thus the proceedings takenup by the Trial Court in re-opening the case; by recording Plea; recording the Evidence of the Complainant as PW.1; on completion of the Evidence from the side of Complainant, recording of statement of the Accused U/Sec. 313 of Cr.P.C; and recording the Order of Conviction, is against the principles of law laid down under the provisions of Sec.20 and 21 of the Legal Services Authorities Act.*

22. Secondly, the Learned Counsel for the Appellant would contend that, reopening of the case by the Trial Court amounts to reviving, either its own order, or reviving the Award passed U/Secs. 20(1)(i) (b), 20(1)(ii) of the Legal Services Authority Act (Act 39/1987). The Trial Court cannot do so. He has placed his reliance on two decisions viz.,

“Therefore, we are of the opinion that the view of this court in Mathew’s case(supra) that the specific provision is required for recalling and issuance order amounting to one without jurisdiction does not laid down the correct law”.

From the above, it is clear that the larger Bench of this court in Adalat Prasad’s case did not accept the correctness of the law laid down by this court in K.M.Mathew’s case. Therefore, reliance on K.M.Mathew’s case by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalath Prasad’s case requires reconsideration be accepted. The next challenge of the learned counsel for

the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplates as stage of discharge like section 239 which provides for a discharge in warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion once the plea of the accused is recorded under section 252 of the Code the procedure contemplated under chapter XX has to be followed which is to take the trial to its logical conclusion. As observed by us in Adalat Prasad's case the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under section 482 of the Code and not any way of an application to recall the summons or to

seek discharge which is not contemplated in the trial of a summons case.

“ It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking section 482 of Code.

23. *Once the parties have arrived at a settlement before the Lok-Adalath and have settled the dispute, by entering into certain terms, then the Trial Court cannot re-open the case and conduct a denova Trial. Conducting of such Trial, would lead to*

reviving the Order Passed by the Lok-Adalath, which is not within the Jurisdiction of the Trial Court.

Even on this count, the proceedings taken up by the Trial Court is against the sound principles of law.

Hence, I answer POINT NO.1 IN THE AFFIRMATIVE.

24. POINT NO.2:

In continuation of the above discussion and in a nut shell it can be concluded that, when once the Complainant and Accused have arrived at a settlement, before the Lok-Adalath and the Lok-Adalath has passed the Orders, by closing the matter. When the terms of the settlement, suggest of re-opening the case by the Complainant, for non compliance of the terms by the Accused, then the Trial Court ought to have re-opened the case and would have proceeded against the Accused U/Sec. 431 of Cr.P.C, but the Trial Court has failed to observed the same. Hence, the Order of Conviction passed by the Trial Court, requires to be set-aside.

25. *It is needless to mention that, when the Accused has failed to adhere to the terms of the Joint*

Memo, the Complainant can proceed with the Accused for compliance of the terms of Joint Memo, either U/Sec 431 of CrPC or by filing an Execution Petition.

But when the Complainant and the Accused have agreed to the terms of Settlement that, incase of non compliance of the terms of Joint Memo by the Accused, the Complainant can re-open the case. Under such circumstances, the Trial Court, on an application of the Complainant, can issue FLW against the Accused to recover the amount of Rs 2,00,000/- from the Accused, as agreed by him, in the Joint Memo before the lok-Adalath.

With these observations, I am constrained to hold that, the Order of Conviction passed by the Trial Court, requires to be setaside by holding the order passed by the Lok-Adalath, is required to be sustained.

Hence, I am constrained to answer POINT NO.2 IN THE AFFIRMATIVE.

26. POINT NO.3:

For having answered Point Nos 1 & 2 in the Affirmative, I proceed to pass the following:

ORDER

Acting U/Sec.386 of Cr.P.C., the Appeal preferred by the Appellant/Accused is hereby Allowed.

In the consequences, the order of conviction passed by the Learned XXXIII Addl. CMM, Bengaluru in C.C.No.50721 of 2015, dtd. 23.02.2021, recording conviction of the Accused, is hereby Setaside.

It is needless to mention that, on the motion of the Complainant, the Trial Court shall take up the proceedings U/Sec 431 of CrPC, either in the same case or by treating the application of the Complainant, as Crl Misc Petition, as per the observations made by the Hon'ble Apex Court and by the Hon'ble High Court of Karnataka, referred in the body of the Judgement.

No order as to costs.

In case, if the Appellant/Accused has deposited the amount, as directed U/Sec. 148 of N.I. Act, the same may be dealt with, as per Law U/Sec. 143 of the said Act.

Remit the TCR to the Trial Court, on obtaining necessary acknowledgment, from it, alongwith the copy of this Judgment.

(Dictated to the Stenographer directly on computer system, computerized by her and print out taken by her, after correction, signed and pronounced by me, in the open court on this the 24th day of January, 2022.)

[Abdul-Rahiman. A. Nandgadi]
LXXII Addl.City Civil & Sessions
Judge, Bengaluru. (CCH-73)