2026:CGHC:31084

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 52 of 2026

Sadan Kumar Banerjee S/o Late K.N. Banerjee Aged About 72 Years R/o Friends Residency Colony House No. F-5/01 Nutan Chowk Police Station Sarkanda Tahsil And District- Bilaspur (C.G.) Present Address Peari Heights Tower A/2 Flat 202, Near Apollo Hospital Rajkishore Nagar, Bilaspur Tah. And District- Bilaspur (C.G.) (Complainant)

... Appellant

versus

1 - Vaidehi Management And Services Pvt. Ltd. Above Apollo City Centre, Trade View Complex, Iii Floor Cmd Chowk Bilaspur -495001 (C.G.) (Accused)

2 - Anurag Vilas Konher Managing Director, Vaidehi Management And Services Pvt. Ltd. Above Apollo City Centre, Trade View Complex, Iii Floor Cmd Chowk Bilaspur -495001 (C.G.)

3 - Smt. Vaidehi Konher, Director Vaidehi Management And Services Pvt. Ltd. Above Apollo City Centre, Trade View Complex, Iii Floor Cmd Chowk Bilaspur -495001 (C.G.)

4 - Suraj Kumar Shrivastava Director Vaidehi Management And Services Pvt. Ltd. Railway Colony, Dhanpuri No. 3 Shahdol (M.P.) Pin -484001

5 - Abhijeet Suresh Aastikar, Director Vaidehi Management And Services Pvt. Ltd. In Above Apollo City Centre, Trade View Complex, Iii Floor Cmd Chowk Bilaspur -495001 (C.G.)

… Respondents

(Cause title taken from Case Information System)

For Appellant	:	Mr. Vivek Kumar Shrivastava, Advocate
For Respondents No.2 to 5	:	Mr. U.K.S. Chandel, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

10/08/2026

1. Present is an acquittal appeal filed by the appellant/complainant against the impugned order dated 02.09.2023 passed by the learned Judicial Magistrate First Class, Bilaspur, in Criminal Case No. 1144/2014, whereby the respondents/accused persons have been acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881, on the basis of a compromise entered into between the parties.

2. The facts of the case are that the appellant was the complainant before the learned trial Court, where he was prosecuting a complaint case under Section 138 of the Negotiable Instruments Act, 1881, with the averment that the complainant is a retired General Manager from South Eastern Coalfields Limited and the respondents/accused persons No. 2 to 5 are the directors of the respondent No. 1 company. The respondents/accused persons obtained a loan of Rs. 25,00,000/- from the complainant, which was to be repaid up to the month of July 2014. In lieu of its repayment, the respondents/accused persons gave a cheque No. 924434 dated 06.07.2014 from their bank account No. 028205500402, which was of ICICI Bank, Vyapar Vihar, Bilaspur Branch, amounting to Rs. 25,00,000/-. When the said cheque was deposited by the complainant in his bank account for its clearance on 28.08.2014, it was dishonoured by the payee bank for insufficient balance. The information about dishonour of the cheque was received by the complainant on 29.08.2014, and then a demand notice was

issued by the complainant to the respondents/accused persons on 12.09.2014 through his counsel at the last known address of the respondents as per the address uploaded on the website of the Ministry of Corporate Affairs, Government of India, with respect to the respondent No.1/company. The said legal notices of respondents No. 1, 2 and 3/accused persons No. 1, 2 and 3 have been returned unserved with the endorsement that the addressee left the place. The notice to other respondents/accused persons No. 4 and 5 has not been returned either served or unserved. The notices were sent to the respondents/accused persons at their residential address as well as official address, and despite having knowledge of dishonour of the cheque, the respondents/accused persons have not paid the cheque amount to the complainant. Thereafter, the complainant filed the complaint case on 14.10.2014.

3. The said complaint case was registered on 18.12.2014, and process was issued to the respondents/accused persons. The accused persons No. 4 and 5 made their appearance through their counsel on 21.04.2015, and they were released on bail. Vide order dated 26.05.2015, an arrest warrant was issued against the accused No. 1, 2 and 3. The accused No. 2 appeared on 26.02.2016, and he was also released on bail. On the next date of hearing, when the accused No. 2 was absent, an arrest warrant issued against him. Thereafter, on 29.08.2016, the accused persons No. 2 Anurag Vilas Konher and No. 3 Smt. Vaidehi Konher appeared, and they were released on bail. On 24.08.2017, a permanent arrest warrant was issued against the accused No. 4 as he remained absent from the proceedings. After

various adjournments and issuance of an arrest warrant against the accused persons, the details of the offence were explained by the learned trial Court on 06.11.2017 against the accused No. 1, 2, 3 and 5.

4. The accused persons denied the details of the offence and claimed trial. Thereafter, the case was fixed for recording of the complainant's evidence. The case was adjourned from time to time for one or other reason. On various occasion, different accused persons were absent, and warrants of arrest were issued, and subsequently they have been released on bail. The accused No. 4, Suraj Shrivastava, also arrested pursuant to an arrest warrant issued against him and produced before the learned trial Court on 19.07.2018, and he too was released on bail.

5. During the pendency of the trial, the accused persons No. 2 (Anurag Vilas Konher) and 3 (Smt. Vaidehi Konher) remained absconding, and permanent arrest warrants have been issued against them vide order dated 29.10.2018, and the learned trial Court proceeded with the trial of the case with respect to the accused persons No. 1 (Vaidehi Management & services Pvt. Ltd.), 4 (Abhijit Suresh Astikar) and 5 (Suraj Kumar Shrivastava). The accused No. 2 and 3 made their appearance in the case, and they have again been released on bail vide order dated 26.07.2023.

6. However, during pendency of the complaint case, the parties entered into a compromise and settled their dispute amicably and a compromise application was also filed by the parties on 02.09.2023; then the learned trial Court accepted the compromise between the

parties and acquitted the respondents/accused persons on the basis of compromise. It was the condition in the compromise that the respondents/accused persons were ready to pay a total of Rs. 32,00,000/- (with respect to the amount involved in three complaint cases, i.e. NIA Complaint Case No. 1143/2014, 1144/2014 and 850/2014) out of a total amount of Rs. 61,87,500/-. Apart from these three cases, two other cases were also filed by the complainant against the accused persons, and it was settled that after clearing the outstanding amount of the aforesaid three cases, the outstanding amount of the remaining two cases, i.e. NIA Case No. 148/2015 and 1102/2014, will be paid by the accused persons. It was also the condition that the amount of Rs. 32,00,000/- will be in 24 monthly instalments of Rs. 1,25,000/- each, and a cheque No. 042836 amounting to Rs. 32,00,000/-was given as security and one cheque of Rs. 1,50,000/- dated 20.09.2023, 07 cheques of Rs. 1,25,000/- each from dated 20.10.2023 to 20.04.2024 for every month and another cheque of Rs. 21,25,000/- dated 20.05.2024 was given to the complainant and it was also agreed by the parties that in case of dishonour of any of the cheque mentioned above, the complainant is entitled to take legal action against the accused persons and if he will repay the entire amount of Rs. 32,00,000/- he is entitled to take back of his security cheque.

7. Under the terms and conditions of the compromise application dated 02.09.2023, the respondents/accused persons were acquitted by the learned trial Court. It is the further case of the appellant that when the said cheques bearing No. 42838 dated 20.10.2023, No. 42839 dated

20.11.2023 and No. 42840 dated 20.12.2023 were deposited in his bank account for its clearance, the said cheques have been again dishonoured by the payee bank and then after issuance of legal demand notice the complaint against preferred a complaint Case under Section 138 of the Negotiable Instrument Act, 1881 before the learned Judicial magistrate First Class, Bilaspur which is pending for its consideration. It is also the case of the appellant that since the respondents/accused persons have violated the terms and conditions of the compromise dated 02.09.2023, the order of their acquittal is liable to be set aside, for which the present acquittal appeal has been filed.

8. Learned counsel appearing for the appellant would submit that the act of the respondents/accused persons itself is a punishable offence under Section 420 of the IPC, as it is not only defrauding the complainant but also the Court. The accused persons knew that they did not have sufficient amount in their bank account to discharge their liability; they entered into a compromise, gave the cheques towards payment of their outstanding amount and to discharge their liability and get an order of acquittal from the learned trial Court on the basis of said compromise. However, the said cheques were again dishonoured by the payee bank. The act of the accused persons clearly shows their mens rea not to obey the order of the Court or not to repay the amount of the complainant. A valid presentation of the complaint and its proceedings were terminated by the accused persons by making assurance for compromise, but their cheques given towards compromise have been dishonoured. The compromise

between the parties, handing over the cheques to the complainant and the dishonour of the cheques could not be disputed by the respondents/accused persons. Since the order of acquittal is based on the compromise and the terms of the compromise itself have not been fulfilled by the accused persons, the order of acquittal is liable to be set aside, and the matter may be remitted back to the learned trial Court to try the case on its own merits.

9. On the other hand, learned counsel appearing for the Respondents opposes the submissions made by learned counsel for the appellant and submits that the proceedings in Complaint Case No. 1144/2014 have already been terminated by order dated 02.09.2023 on the basis of compromise between the parties. After dishonour of the subsequent cheque, a fresh cause of action arose in favour of the appellant/complainant, and the complainant is already prosecuting another complaint case with respect to the subsequent cause of action arose against the dishonour of the cheque which was given to him under the terms of the compromise dated 02.09.2023. There cannot be any double jeopardy for the same amount, and there cannot be two parallel proceedings for the same subject matter. The complainant is already prosecuting the accused persons in the complaint case on the cause of action that subsequently arose in his favour. Even otherwise the non-compliance of terms of compromise cannot be a ground to set aside the order of acquittal which was passed on the compromise between the parties and the complainant can file a fresh complaint for fresh cause of action which he already availed before the learned trial Court. in support of his submission he would reply upon the judgment

passed by Hon'ble Supreme Court in the case of **M/s Gimpex Pvt. Ltd. vs. Manoj Goel** (2022) 11 SCC 705, and submits that there is no merit in the appeal and the same is liable to be dismissed.

10. I have heard learned counsel for the parties and perused the material annexed with the present acquittal appeal and gone through the record of the trial Court.

11. The question which arises for consideration in the present acquittal appeal is whether the order dated 02.09.2023, whereby the learned trial Court acquitted the respondents/accused persons, on the basis of a compromise entered into between the parties, can be permitted to stand when the very terms and conditions of the compromise admittedly remained unfulfilled, and the cheques issued by the accused persons in discharge of their obligations under the compromise were again dishonoured.

12. From the record, it is revealed that it is not in dispute that the original complaint under Section 138 of the Negotiable Instruments Act, 1881 was at the stage of trial, when it was decided on the basis of compromise. During the trial of the case against the accused persons, the complainant had already entered the witness box and was prosecuting the proceedings on merits. During the pendency of the complaint, the parties jointly submitted a compromise application before the learned trial Court, whereunder the accused persons agreed to discharge their liability by paying a consolidated amount of Rs. 32,00,000/- in instalments and issued several post-dated cheques together with a security cheque. It was only on the basis of such

assurance and the settlement so arrived at, learned trial Court accepted the compromise and acquitted the accused persons.

13. A careful reading of the compromise application demonstrates that the acquittal was not founded merely upon the willingness of the parties to settle their dispute but upon the promise made by the accused persons that the agreed amount would be paid in the manner stipulated therein. The compromise itself specifically contemplated the consequences of dishonour of any of the cheques issued pursuant thereto and preserved the complainant's right to initiate appropriate legal proceedings. Thus, the very foundation upon which the learned trial Court terminated the criminal proceedings was the bona fide expectation that the accused persons would faithfully perform their obligations under the settlement. It is also not in dispute that after obtaining the order of acquittal, the respondents/accused persons failed to honour the compromise. The cheques bearing Nos. 042838, 042839 and 042840, issued in pursuance of the compromise/settlement, were dishonoured upon presentation. The respondents have not disputed either the compromise, the issuance of the said cheques or their dishonour. Thus, the material placed on record prima facie demonstrates that the obligations undertaken by the accused persons under the compromise, on the basis whereof the criminal proceedings were terminated, have not been duly fulfilled.

14. It is true that every subsequent breach of a compromise may not, by itself, furnish a ground for setting aside an order of acquittal. However, the present case stands on a different footing. The record indicates

that the acquittal of the accused persons was founded upon the compromise placed before the learned trial Court, under which the accused persons undertook to discharge the agreed liability in the manner stipulated therein and issued post-dated cheques towards such settlement. The subsequent dishonour of the cheques, coupled with the admitted non-fulfilment of the obligations undertaken under the compromise, raises a serious question regarding the bona fides and efficacy of the very settlement on the basis of which the criminal proceedings came to be terminated. In such circumstances, the appellate Court is required to examine whether the impugned order of acquittal can be permitted to stand merely because the order was formally passed on the basis of the compromise, notwithstanding the admitted failure of the terms which formed the foundation thereof.

15. It is necessary to note the relevant part of the compromise application dated 02.09.2023 which reads as under:-

> "1. यह कि, न्यायालय श्रीमान् न्यायिक दण्डाधिकारी प्रथम श्रेणी बिलासपुर के न्यायालय में परिवादी द्वारा प्रस्तुत परिवाद प्रकरण लंबित है जिनका विवरण इस प्रकार है :-
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> i- एन आई ए परिवाद प्रकरण क्रमांक -1143/2014 पक्षकार सदन कुमार बनर्जी विरुद्ध वैदेही मैनेजमेंट एण्ड सर्विसेज प्रायव्हेट लिमिटेड प्रश्नाधीन चेक क्रमांक -924434 दिनांक 06.07.2014 राशि 25,00,000/-रू0 ।
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> ii- एन आई ए परिवाद प्रकरण क्रमांक -1144/2014 पक्षकार सदन कुमार बनर्जी विरुद्ध वैदेही मैनेजमेंट एण्ड सर्विसेज प्रायव्हेट लिमिटेड प्रश्नाधीन चेक क्रमांक -920404 दिनांक 16.06..2014 राशि 11,87,500/-रू0 ।

iii- एन आई ए परिवाद प्रकरण क्रमांक -850/2014 पक्षकार सदन कुमार बनर्जी विरुद्ध वैदेही मैनेजमेंट एण्ड सर्विसेज प्रायव्हेट लिमिटेड प्रश्नाधीन चेक क्रमांक -005076 दिनांक 21.06.2014 राशि 25,00,000/-रू0 ।

2. यह कि, उपरोक्त तीनों प्रकरणों में कुल राशि 61,87,500/-रू0 के एवज में आरोपी अनुराग कान्हेरे कुल 32,00,000/-रू0 अपनी खराब आर्थिक स्थिति के कारण वर्तमान में भुगतान करने हेतु सहमत है। उपरोक्त तीनो प्रकरणों के अतिरिक्त आरोपी अनुराग कान्हेरे के विरुद्ध परिवादी के परिवाद पर दो अन्य प्रकरण भी न्यायालयों में लंबित है जिनका विवरण इस प्रकार है:-

i- एन आई ए परिवाद प्रकरण क्रमांक -148/2015 पक्षकार सदन कुमार बनर्जी विरुद्ध अनुराग कान्हेरे प्रश्नाधीन चेक क्रमांक -000767 दिनांक 26.09.2014 राशि 42,00,000/-रू0 ।

ii- एन आई ए परिवाद प्रकरण क्रमांक -1102/2014 पक्षकार सदन कुमार बनर्जी विरुद्ध अनुराग कान्हेरे प्रश्नाधीन चेक क्रमांक -002243 दिनांक 18.06.2014 राशि 22,23,500/-रू0 ।

उक्त दोनो प्रकरण में आरोपी का स्थायी वारंट है जिसमें वह जमानत कराकर प्रश्नाधीन चेकों की राशि का भुगतान दायित्व को स्वीकार करता है और उक्त दोनो प्रकरणो की राशि का भुगतान भी उपरोक्त कण्डिका क्रमांक 01 में उल्लेखित तीनों प्रकरणों के भुगतान के पश्चात करने हेतु सहमत है। इसलिये उक्त दोनो प्रकरणों में भी जमानत कराकर प्रकरण में उपस्थित होगा।

3. यह कि, राजीनामा राशि 32,00,000/-रू0 का भुगतान आरोपी के द्वारा परिवादी को आगामी 24 माह में देय होगी जिसकी मासिक किश्त 1,25,000/-रू0 होगी। उक्त राशि के भुगतान हेतु आरोपी द्वारा परिवादी को निम्नानुसार चेक प्रदान किये जा रहे है।

अभियुक्त द्वारा कुल 24 माह में 1,25,000/-रू0 प्रतिमाह चेक / आर टी जी एस / एन ई एफ टी के माध्यम से भुगतान किया जावेगा। जिसका सुरक्षा चेक 32,00,000/-रू0 एवं बाकी राशि 1,25,000/-रू0 के 7 चेक, 1,50,000/-रू0 का 1 चेक एवं 21,25,000/-रू0 सुरक्षा चेक के माध्यम से दिया जा रहा है।

अभियुक्त 21,25,000/-रू0 का सुरक्षा चेक 1,25,000/-रू0 के 17 मासिक चेक जमा कर वापस ले सकेगा।

एक्सिस बैंक के चेक क्रमांक, दिनांक व राशि:

क्र.	चेक क्रमांक	दिनांक	राशि
1.	चेक क्रमांक – 042836		32,00,000/-रू0 सुरक्षा हेतु
2.	चेक क्रमांक-042837	20.09.2023	1,50,000/-रू0
3.	चेक क्रमांक-042838	20.10.2023	1,25,000/-रू0
4.	चेक क्रमांक-042839	20.11.2023	1,25,000/-रू0
5.	चेक क्रमांक-042840	20.12.2023	1,25,000/-रू0
6.	चेक क्रमांक-042841	20.01.2024	1,25,000/-रू0
7.	चेक क्रमांक-042842	20.02.2024	1,25,000/-रू0
8.	चेक क्रमांक-042843	20.03.2024	1,25,000/-रू0
9.	चेक क्रमांक-042844	20.04.2024	1,25,000/-रू0
10.	चेक क्रमांक-042845	20.05.2024	21,25,000/-रू0

4. यह कि, उपरोक्त चेकों के अतिरिक्त एक्सिस बैंक का चेक क्रमांक 042836 उल्लेखित राशि 32,00,000/-रू0 बतौर सुरक्षा आरोपी के द्वारा परिवादी को प्रदान किया जा रहा है। उपरोक्त कण्डिका क्रमांक 03 में उल्लेखित चेकों में से किसी भी चेक के अनादरण के कारण उसका भुगतान परिवादी को भुगतान न होने पर परिवादी इस चेक के आधार पर विधिक कार्यवाही करने के लिये स्वतंत्र रहेगा, और यदि उपरोक्त कण्डिका क्रमांक 03 में उल्लेखित सभी तीनों चेकों का भुगतान आरोपी के द्वारा परिवादी को कर दिया जाता है तो यह चेक परिवादी से आरोपी वापस प्राप्त करने का अधिकारी रहेगा।

5. यह कि, आरोपी प्रतिमाह 15 तारीख से 20 तारीख के मध्य परिवादी को मासिक किश्त के रूप में उपरोक्त वर्णित अनुसार राशि 24 किश्तो में या अपनी सुविधानुसार 24 से कम किश्तो में प्रदान किये गये चेक के माध्यम से परिवादी के भारतीय स्टेट बैंक एस ई सी एल शाखा बिलासपुर के खाते में जमा होगी।

6. यह कि, आरोपी द्वारा प्रदत्त सुरक्षा स्वरूप चेक आगामी 24 माह के किश्त के रूप में परिवादी को जमा करेगा दिये जाने वाले संबंधित चेक की छाया प्रति संलग्न है।

7. यह कि, इस समझौते के पूर्ण होने तक यदि आरोपी अपना निवास पता अथवा मोबाईल नंबर बदलता है तो न्यायालय एवं परिवादी को उक्त संबंध में तत्काल सूचित करेगा।

8.यह कि, आरोपी यह भी सुनिश्चित करेगा कि दिये गये चेक बैंक में लगाने पर अनादरण न होने पावे तथा पर्याप्त राशि अपने बैंक खाते में रखेगा तथा समयसीमा के पहले भी देय राशि दिये जाने पर अपनी सहमति देता है। यदि कोई चेक अनादरित होता है तो यह राजीनामा निरस्त माना जावेगा और परिवादी को प्राप्त राशि कुल प्रतिफल राशि 61,87,500/-रू0 में से समायोजित कर शेष राशि के संबंध में प्रकरण एवं संबंधित पुलिस में शिकायत करने का अधिकारी परिवादी होगा।

9. यह कि, राशि का भुगतान न होने पर या समझौता पूर्ण रूप से अमल न होने पर वर्तमान समझौता निरस्त माना जावेगा तथा परिवादी, आरोपी पर विधिक कार्यवाही के लिये स्वतंत्र होगा एवं विधिक कार्यवाही सम्पूर्ण वैदेही मैनेजमेंट एवं सर्विसेज लिमिटेड के चारों डायरेक्टर के विरुद्ध परिवादी परिवाद करने का अधिकारी होगा।

10. यह कि, आरोपी अनुराग कान्हेरे वैदेही मैनेजमेंट एण्ड सर्विसेज लिमिटेड की तरफ से यह समझौता सभी बचे डायरेक्टर की तरफ से करने में अपनी सहमति देता है। आरोपी अनुराग कान्हेरे शेष आरोपीगण की ओर से वर्तमान राजीनामा करने हेतु अधिकृत है।

11. यह कि, आरोपी के द्वारा राशि 50,000/-रू0 परिवादी को गूगल पे के माध्यम से दिनांक 11.08.2023 को बतौर अग्रिम दिया गया है।

12. यह कि, इस समझौते के आधार पर वर्तमान में इस न्यायालय में चल रहे उपरोक्त कण्डिका क्रमांक 01 में उल्लेखित तीन प्रकरणों का ही निराकरण होगा।

13. यह कि, उपरोक्त कण्डिका 02 में उल्लेखित दोनों प्रकरणों की राशि का भुगतान भी वर्तमान राजीनामा राशि भुगतान के 02 वर्ष के भीतर अनिवार्य रूप से आरोपी के द्वारा किया जायेगा।

14. यह कि, राशि भुगतान के पूर्व आरोपीगण का देहांत हो जाता है तो उक्त राशि दण्ड प्रक्रिया संहिता में उल्लेखित राशि क्षतिपूर्ति राशि के रूप में वसूली योग्य होगी। इसी प्रकार यदि परिवादी इस दुनिया में नहीं रहता है तो उसके विधिक वारिसान उक्त राशि को प्राप्त करने के विधिक अधिकारी होंगे। इस राजीनामा के साथ आरोपी के आधार कार्ड, पेन कार्ड की आरोपी द्वारा स्व सत्यापित छाया प्रति संलग्न है।

15. यह कि, आरोपी के द्वारा परिवादी को 24 किश्तों के भुगतान हेतु उपरोक्त उल्लेखित अनुसार चेक एवं बतौर सुरक्षा प्रदान किये जाने वाला चेक मूलतः सौंपा जा रहा है।"

16. Learned counsel for the respondents has placed reliance upon the decision of the Hon'ble Supreme Court in ***M/s Gimpex Pvt. Ltd.*** (supra). The said decision was rendered in a factual situation where the complaint arising out of the original dishonour of the cheque was still pending and, during the pendency of such proceedings, the parties entered into a settlement pursuant to which fresh cheques were issued. Upon dishonour of the settlement cheques, a subsequent complaint under Section 138 of the Negotiable Instruments Act was instituted. The Hon'ble Supreme Court, therefore, examined the effect of the settlement and the permissibility of continuation of the earlier complaint along with the subsequent proceedings arising out of the dishonour of the settlement cheques. In the case of **M/s Gimpex Pvt. Ltd.** (supra), the Hon'ble Supreme Court has observed that:-

> "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.

* * *

43. 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 27 and Expeditious Trian of Cases Under Section 138 of NI Act 1881, In re 28 has recognised 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.

44. At this stage, it may be necessary to dwell on the decision of this Court in Lalit Kumar Sharma v. State of U.P. 32 and Arun Kumar v. Anita Mishra 33. In Lalit Kumar Sharma 32, a company, with two Directors (Manish Arora and Ashish Narula), had obtained a loan for the amount of Rs 5,00,000 and drew two cheques in an equivalent amount in favour of the first respondent. The cheques were returned unpaid for "insufficiency of funds". A complaint was instituted under Section 138 of the NI Act against the two Directors. The appellants, who were also Directors of the said company, were not signatories to the cheques and had not been made parties to the complaint. During the pendency of the complaint, an agreement was entered into between Manish Arora, Ashish Narula and the complainant under which it was envisaged that if a cheque for Rs 5,02,050 was issued, the complaint would be withdrawn. Manish Arora issued a cheque which was returned on presentation for insufficiency of funds. Meanwhile, Ashish Narula and the

company entered into an agreement stating that the liability arising from the said transaction was of the director personally, and not of the company. Another complaint was filed on the basis of the return of the subsequent cheque, where Manish Arora and Ashish Narula and the appellants were made parties. In this backdrop, the Court noted that in respect of the first cheques, the appellants were not proceeded against and though a compromise was entered into between Manish Arora and Ashish Narula and the complainant, the complaint had not been withdrawn and the two Directors had been found guilty of an offence under Section 138 of the NI Act. Manish Arora had issued the second cheque in terms of the settlement between the parties. It was in this backdrop that the Court observed: (Lalit Kumar Sharma case 32, SCC p. 642, paras 15 & 17)

15. Evidently, therefore, the second cheque was issued in terms of the compromise. It did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt.

17. Thus, the second cheque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the Directors. There was only one transaction between Shri Ashish Narula, Shri Manish Arora, Directors of the Company and the complainant. They have already been punished. Thus, the question of entertaining the second complaint did

> not arise. It was, in our opinion, wholly misconceived. The appeal, therefore, in our opinion, must be allowed. It is directed accordingly. The respondent shall bear the costs of the appellants. Counsel's fee assessed at Rs 25,000."

17. The decision in **M/s Gimpex Pvt. Ltd.** (supra) is distinguishable on the material factual circumstances of the present case. Here, the original complaint was not pending when the subsequent complaint came to be instituted. The learned trial Court had already disposed of the original complaint by acquitting the respondents on the basis of the compromise dated 02.09.2023, and it was only thereafter, upon dishonour of the cheques issued in terms of the said compromise, that the complainant initiated fresh proceedings under Section 138 of the Negotiable Instruments Act, 1881. Thus, unlike the case of **M/s Gimpex Pvt. Ltd.** (supra), the present case did not involve the simultaneous continuation of the original complaint and a subsequent complaint founded upon the settlement cheques. The controversy in the present appeal is, therefore, not whether two such proceedings can be permitted to continue simultaneously, but whether the order of acquittal, which was passed on the basis of the compromise, can be sustained when the obligations undertaken under the very compromise forming the basis of such acquittal admittedly remained unfulfilled. The validity and sustainability of the impugned acquittal, therefore, has to be independently examined on the facts and circumstances of the present case.

18. Equally unacceptable is the submission that restoration of the original complaint would amount to subjecting the respondents to double jeopardy. The protection against double jeopardy under Article 20(2) of the Constitution of India and Section 300 of the Code of Criminal Procedure operates where a person, having been tried and convicted or acquitted of an offence, is sought to be tried again for the same offence, subject to the conditions prescribed therein. In the present case, the order of acquittal itself is under challenge in the present statutory appeal. If the appellate Court finds the impugned order to be unsustainable and sets it aside, the consequence would be restoration of the original proceedings in accordance with law only against the accused persons. Such revival pursuant to the appellate jurisdiction cannot be equated with a fresh or second prosecution so as to attract the principle of double jeopardy.

19. Having regard to the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned order of acquittal of accused persons cannot be permitted to stand. The material on record demonstrates that the acquittal of accused persons was recorded on the basis of the compromise and the assurances and obligations undertaken by the accused persons thereunder. When the essential obligations undertaken under the very settlement, which formed the basis for termination of the original proceedings, admittedly remained unfulfilled and the cheques issued pursuant thereto were dishonoured, the foundation on which the impugned order was passed stood materially affected. In the peculiar facts of the present case, therefore, the interests of justice warrant interference with the order of acquittal

and restoration of the original complaint for its adjudication on merits only with respect to the accused persons.

20. Accordingly, the impugned order dated 02.09.2023 passed by the learned Judicial Magistrate First Class, Bilaspur, in Criminal Case No. 1144/2014, whereby the respondents/accused persons were acquitted on the basis of the compromise, is **set aside**. Consequently, the present acquittal appeal is **allowed**, and Criminal Case No. 1144/2014 shall stand restored to the file of the learned trial Court.

21. The matter is remitted to the Court of the learned Judicial Magistrate First Class, Bilaspur, for adjudication of the complaint afresh on its own merits, strictly in accordance with law, without being influenced by any observation made in the present judgment, which shall be construed only for the purpose of deciding this appeal.

22. The complainant and accused persons are directed to appear before the learned trial Court on **16.09.2026**, whereafter the learned trial Court shall proceed with the matter expeditiously in accordance with law and shall decide the case within six months from the said date.

23. It is expected that both parties shall extend full cooperation in the expeditious disposal of the proceedings and shall refrain from seeking unnecessary adjournments, except for genuine and unavoidable reasons.

24. Registry is directed to immediately send the record of the concerned trial Court back along with a copy of this judgment.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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