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

\+ CRL.M.C. 8365/2024 & CRL.M.A. 31941/2024 (stay)

SHREE SAI RAM TRADER AND ANOTHER .....Petitioners

Through: Mr. Shwetank Sailakwal & Mr. Mayank Suryan, Advocates

versus

SIRISH PODDAR .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **22.10.2024**

CRL.M.A. 31942/2024 (*Exemption*)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CRL.M.C. 8365/2024

1. This petition has been filed seeking quashing of summoning order dated 9th May 2024 passed by the Judicial Magistrate (NI Act) Digital Court - 03, New Delhi.

2. It is submitted by petitioners' counsel that there was business transaction between petitioners-accused and respondent-complainant since 2016 which continued through the years. Certain cheques were presented in 2022 which were dishonored. Complaints were filed thereafter by complainant in October 2022. On 24th December 2022, a settlement was arrived at between the parties where it was mutually agreed that petitioners

shall pay a sum of Rs.1 crore towards full and final settlement and all complaints cases including connected matters shall be disposed of.

3. Counsel for petitioners' further states that the said amount of Rs.1 crore was paid which was duly encashed by respondent-complainant. Section 138 NI Act proceedings were pending since 2022 and by order dated 9th May 2024, the Magistrate was pleased to issue summons.

4. On 24th August 2024, petitioners appeared before the Trial Court for dropping the proceedings in view of the settlement; the Trial Court passed order dated 23rd September 2024 dismissing the application / submission of petitioners and fixed the matter for framing of notice. The Court noted that once the cognizance has been taken, proceedings cannot be dropped by the Trial Court and the matter can end only if the same is compounded/decided/withdrawn.

5. Counsel for petitioners has drawn attention of this Court to the decision of the Supreme court in ***Gimpex Pvt. Ltd. v. Manoj Goel*** (2022) 11 SCC 705, *inter alia* on para 41, which is extracted below for ease of reference:

> "*41. When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons — higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement*

agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law."

(emphasis added)

6. In this view of the matter, on petitioners taking steps through all permissible modes, notice be issued to respondent returnable before this Court on 29th January 2025.

7. Trial Court may schedule a date after the date fixed before this Court.

8. Copy of order be given *dasti*.

9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 22, 2024/sm