IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 3762 of 2023
With
IA No: CRAN 1 of 2025, CRAN 2 of 2025
CRR 3940 of 2023
IA No: CRAN 1 of 2025, CRAN 2 of 2025
Simoco Telecommunication (South Asia) Lmt. & Ors.
Vs.
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Sourav Chatterjee, Sr. Adv., Ms. Sreenita Ghosh Dastidar Ms. Sneha Singhania
For the Opposite Party No.2	:	Mr. Satadru Lahiri Mr. Safdar Azam Mr. Diptomoy Talukder Mr. Jyotirmoy Talukder
Heard on	:	21.07.2026
Judgment on	:	19.11.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have assailed the judgment and order passed in Criminal appeal No. 271 of 2019 dated 10.08.2023 passed by the Learned Additional Sessions Judge, 1st FTC, City Sessions Court, Kolkata thereby affirmed the conviction of the petitioners under section 138 of the Negotiable

Instrument Act (in short N.I. Act) and sentencing order to pay fine and compensation, in default to suffer simple imprisonment for 6 months and also affirmed the Judgment and order passed by the Metropolitan Magistrate 14th court Kolkata, dated 08.11.2019 in complaint case No. 23410 of 2008, thereby convicting the petitioners for the offences punishable under section 138/141 of the N.I. Act and to suffer simple imprisonment for 6 months each and to pay fine of Rs. 70,000,00/- including order of attachment against petitioner no.1 specifically.

2. Learned senior counsel appearing on behalf of the petitioner Mr. Chatterjee submits that petitioner no.1 is a company incorporated under the Companies Act 1956 engaged in manufacturing exporting and supplying of technological products. Petitioner nos. 2, 3 and 4 are the employees of the petitioner no.1 company holding positions of Managing Director, General Manager (Logistics) and officer in charge (purchase) respectively. The opposite party No. 2 was supplier of imported mobile phones and accessories to the petitioner no.1 company. From time to time petitioner no.1 company and the opposite party No. 2 entered into contractual agreements under which the petitioner no. 1 company purchased the mobile telephones sets and accessories imported by opposite party no.2. In terms of the explicit clauses of the company, the petitioner no.1 company issued post-dated cheques to opposite party No. 2 with the clear mutual understanding that the same were to be presented and cleared only upon or after their respective dates, enabling the petitioner to either realize sale proceeds from their downstream buyers or, alternatively, arrange matching funds from independent source to ensure clearance. The petitioner no.1

company and the OP No. 2 maintained a running account under which regular payments were remitted by the petitioners from time to time. With a view to settle and close the said running account, the petitioners issued seven account payee cheques in favour of OP No.2, aggregating to a total sum of Rs. 36,12,174/- towards full and final settlement of all outstanding dues. Petitioner further submits that no further commercial transaction took place between the parties after June, 2009. On 24.07.2008 the petitioners received a legal notice from OP No. 2 under section 138/141 of the N.I. Act alleging dishonour of all the aforesaid seven cheques on the ground of "exceeds arrangements" and thereby they demanded payment of Rs. 36,13,174/- from the petitioners. Thereafter OP No.2 filed the complaint case being No. 23410 of 2008 which were ultimately tried by the Trial Court.

3. During the pendency of the aforesaid complaint case both the PetitionerNo. 1 and the OP No.2 jointly and amicably entered into a settlement agreement dated 02.10.2008 against the aforesaid aggregate sum of Rs. 36,13,174/- being the value of dishonoured instruments. In terms of agreement the petitioner no.1 company issued nine separate cheques and it was agreed that upon receipt of total settlement amount, the OP No.2 would return the dishonoured cheques and the complainant would make prayer for closure of aforesaid complaint case being No. 23410 of 2008.

4. The learned Trial Magistrate committed a patent perversity by holding that the settlement agreement dated 02.10.2008 to be a unilateral agreement but in reality it was a bilateral documents duly executed and signed by the petitioner no.1/company and the OP No.2 unequivocally accepted and acted upon this bilateral agreement and in fact, exhibited it in

the course of trial as complainant's exhibit. However, the above mentioned 9 cheques were also dishonoured.

5. The petitioner's specific case is that petitioner no.1/company being a *bonafide* business entity subsequently paid off the entire balance amount as follows:-

(a) Rs. 30,73,550/- by way of RTGS on 14.11.2008

(b) Rs. 4,00,000/- by way of RTGS on 04.12.2008

(c) All the above payments were duly acknowledged and adjusted by the Op No.2 company in its books of accounts

(d) It is true that due to inadvertence and oversight, a sum of Rs. 1,39,624/- remained unpaid, which the petitioner no.1 company has always been willing to remit, of course without prejudice to its rights and contentions and without admitting any allegation and/or charge to be true.

6. In this context learned counsel for the petitioner has exclusively canvassed that the Learned Magistrate in his judgment and order of conviction in both the matters recorded that exhibit 8 in CRR 3940 of 2023 and Exhibit-7 in CRR 3762 of 2023 are unilateral documents and the Appellate Court did not interfere with such perverse finding made by the Trial Court. His further case is although the balance sheets filed before the Registrar of Companies (ROC) by the complainant/company from time to time were exhibited before the learned Trial Magistrate in both the matters, but neither the Learned Magistrate nor the Court of Sessions considered the glaring fact that the amounts allegedly due and payable under the impugned cheques in question were never shown in the balance sheet under the

heading of “Sundry Debtors”. The courts below ought to have recorded a specific finding with regard to such pointed defence taken on behalf of the petitioner/convict, instead both the courts below convicted the petitioner, banking broadly on the presumption created under section 139 of the N.I. Act.

7. He according argued that the presumption under section 139 is a rebuttable one. It is nobody’s case that the balance sheets exhibited before the learned Trial Court were forged or did not actually belong to the complainant/company. In view of the same, in a scenario where complainant conveniently does not show the amount mentioned on the face of the impugned cheque as a part of its Sundry Debts, in the balance sheets filed year after year before and after the commencement of the impugned proceedings, assumes immense significance and rebuts the presumption and establishes that the other documents including bank statements and letters of credit exhibited by the accused showing payments during the pendency of the proceeding after the compromise was entered into although the cheques issued per se under the compromise were dishonoured.

8. He further argued that OP No.2/company has relied upon a self-serving unsubstantiated ledger and list of transaction to falsely assert that a debt exceeding Rs. 3 Crores was due and payable by the petitioner no.1 /company. This claim is inherently malicious and legally unsustainable as the statutory balance sheets and financial statements filed by the OP No.2 itself do not reflect any such outstanding debt. The courts below failed to appreciate that the OP no.2’s own audited account for the years ended with 31.03.2006, 31.03.2007, 31.03.2008, 31.03.2009, and 31.03.2010 which

were duly exhibited by the defence, clearly failed to demonstrate any such purported debt or liability. The fact that the Petitioner No.1 company was not shown as a Sundry Debtor in the balance sheets makers it clear that the Petitioner no.1 company fully discharged its entire liability towards OP no. 2 company by January, 2009 rendering the continuation of the prosecution a manifest abuse of process of criminal law. This absolute extinguishment of debts is also established by the complainants own audited balance sheets which show that corporate receivable under sundry debtors collapsed from Rs. 12,77,308/- as on 31.03.2026, Rs. 15,51,31,774/- as on 31.03.2007, and Rs. 11,74,15,953 as on 31.03.2008 down to a mere Rs. 15,14,605 as on 31.03.2009 and Rs. 13,04.747/- as on 31.03.2010.

9. Mr. Chatterjee, Learned counsel appearing on behalf of the petitioner further argued that the documents which the petitioners relied are of sterling quality and unimpeachable in character and also in the nature of public documents.Balance sheets clearly establish the fact that the petitioner no.1 company has no dues payable to the OP No. 2. The courts below committed a patent perversity and illegality by ignoring the complainants own public statutory audited balance sheets, which entirely falsify the existence of any outstanding liability making the conviction and sentence wholly unsustainable in the eye of law.

10. Mr. Chatterjee has also advanced other set of arguments contending that it is settled principle of law that once parties voluntarily entered into a settlement agreement and fresh financial instruments are issued, the underlying liability of the first set of cheques resulting into the complaint are entirely subsumed by the settlement agreement. In this context he

relied upon a judgment passed by three Judges Bench of the Apex court in **Gimpex (p) Ltd. Vs. Manoj Goel** reported in **(2022)11 SCC 705.** Therefore, the OP No. 2 herein by accepting and/or acting upon the settlement agreement dated 02.10.2008 as recorded in such settlement agreement and nine cheques issued along with the settlement agreement has waived its claim of this case and as such the trial ought not to have continued any further as the settlement agreement subsumed the complaint. Therefore, he prayed for quashment of the proceeding.

11. Mr. Gangully learned counsel appearing on behalf of the OP submitted that scope of interference with impugned judgement and sentence as passed by Learned Magistrate and affirmed by the Appellate Court is extremely limited while exercising the revisional jurisdiction under section 401/482 of the Cr.P.C. The judgment and order of conviction passed by the courts below do not suffer from any perversity or manifest error or gross illegality or complete non-appreciation of any materials on records or ignorance to the settled proposition of law. Both the judgments will reveal that both the courts below dealt with evidences adduced by respective parties and issues canvassed therein. Therefore, in exercising revisional jurisdiction the High Court cannot re-appreciate evidence or can make a fresh enquiry to upset a concurrent finding of two courts on factual issues/ evidences. Merely there is a scope of appreciating the evidence on record and or facts of the case in a different manner, than in which the learned courts appreciated the same, is no ground for interfering with the impugned judgment and order passed by learned Magistrate and affirmed by the court below. Therefore, the

judgment and order passed by the courts below does not call for interference by this court as they do not suffer from perversity.

12. He further submits as regards the alleged plea of refund the record reveals that debt in respect of the impugned cheques has not been liquidated, rather it is continuing one. The liability in the case accrues from High seas sale agreement and allied document executed by and between the parties which are marked as exhibit 2 series and 3. Since the transaction between the parties are continuous in its nature, consideration of details of transactions/ledgers of the complainant company marked as exhibit 8 has also sufficient bearing in the case in hand.

13. His further case is that exhibit 9 and 10 completely dislodges alleged payment of Rs. 57,720/- and Rs. 2,52,200/- vide Cheque No. 17363 and 17362 in connection with the present transaction. The settlement agreement was executed subsequent to issuance of the aforesaid cheques i.e. on 02.10.2008 and therefore, cannot cover the debt part of the settlement agreement. Payment of 57,720/- was made in respect of a completely different transaction and as payment of outstanding after adjusting with accounts of the transactions made on 28.03.2008. Payment of Rs. 2,52,200/- was made to **AFL Dashser Pvt. Ltd**. as freight charges as revealed from exhibit 10 and said payments have been made much prior to the transaction mentioned in exhibit 7. Similarly, the payments made by RTGS does not match with the amount of the debt in the instant case and the RTGS dated 04.12.2008 amounting to Rs. 4,00,000/- has also been used in connection with the transaction which is the subject matter of CRR 3940 of 2023, which further shows that payments were not made with

regard to the instant case. The petitioner failed to show any document in support of their claim that amount covered by RTGS has been paid to liquidate the debt covered under exhibit 7. Further "payment has been made during the pendency the case" is a fact asserted by the accused to rebut the prosecution case. Therefore the burden of proof of such fact is on the accused himself as mandated under section 103 of Indian Evidence Act. The alleged plea of the petitioners that extra sum has been paid to the complainant clearly show that petitioners are trying to mix the payment made for other transaction with the transaction in question herein. He therefore submits that the conduct unmistakably demonstrates that the alleged plea of refund in an afterthought manufactured and has been orchestrated for circumventing the legitimate claim of the complainant/OP. The balance sheets of the complainant have been prepared in accordance with law and it needs to be read as a whole but not in any cryptic manner as desired by the petitioners.

14. Mr. Gangully further argued that having regard to the nature of transaction, contents of the covering letter dated 18.03.2008, terms of agreement and commitment made by the petitioners, it is explicit that seven cheques in question issued under Exhibit 3 was in discharge of liability and in the respective documents they have admitted the issuance of the said cheques and the existence of the debts/liability arising therefrom. The signature on the cheques is admitted as well as no reply was given to the demand notice issued, though a plea has been taken as to non-receipt of demand notice, which is contrary to the record. The letter dated 02.10.2008 was issued for originating the debt covered by the 1st dishonoured seven

cheques and also premises the re payment of the debt by nine other cheques accompanied with the said letter. The payments of Rs. 57720/- and 2,52,200/- are completely different transaction and cannot be made for liquidating the present debt/liability. The RTGS dated 04.12.2008 for dislodging the present debt transactions are also subject matter to different proceeding.

15. Mr. Gangully further argued that though the petitioners have relied upon the decision of **Gimpex (P) Ltd.** (supra) but it has no manner of application in the instant case and the same is justifiable on facts of that case. Therefore, the learned Counsel for the petitioner submits that since the proceeding is pending almost 17 years due to extreme dilatory and delaying tactics adopted to proceed with the trial, the impugned judgments warrant no interference by this High Court and therefore the instant application is liable to be dismissed.

Decision

16. The challenges preferred by petitioner in this application are *interalia* on the grounds which are as follows:-

(i) *Learned courts below erroneously observed that exhibit 7 is an unilateral document but infact said settlement of agreement marked exhibit 7 bears the signature of acknowledgment by the complainant which contains the case no., the modus in which the debt are to be discharged and understanding of withdrawing the proceeding subsequent to honour of the said cheques.*

(ii) *Once the complainant entered into compromise during pendency of the prosecution and accepted subsequent cheques which being dishonoured gave rise to separate cause of action and thereby first complaint subsumed to second cause of action. Failure to initiate prosecution on second cause of action does not permit the complainant to continue with subsumed cause of action.*

(iii) *The entire legal debt/ liability has been paid by the petitioners to OP no.2 vide cheque no. 17362 dated 22.09.2008 for Rs. 2,52,000/- and cheque no. 17363 dated 23.09.2008 for Rs. 57,720/- respectively and vide RTGS payment of Rs. 30,73,550/- dated 14.11.2008 and Rs. 4,00,000/- dated 04.12.2008 respectively. The entire payment made includes an extra*

amount to the tune of Rs. 1,70,296/-. Even after such payment OP has not withdrawn the case.

(iv) *The plea of complainant that the said payment has been made to liquidate different debts is misnomer and runs counter to the record. The certified copy of the audited balance sheet of the company as exhibited by defence does not contain the alleged due receivable in the column of sundry debtors in respective balance sheet. In this context the ledger marked exhibit 7 and the materials substantiating liquidation of cheque amount during the pendency of the case is a manufactured document. The complainant being a corporate entity is bound to disclose its debt and balance sheet and non disclosure of the same coupled with payment made during pendency of case establishes that the amount has been liquidated.*

(v) *The accused has been able to discharge the burden by resorting to pre-ponderence of probability and as such presumption under section 139 of N.I. Act is no more available and the burden shifts to the complainant.*

(vi) *The petitioners no. 3 & 4 are not the directors of the company but general employee who has been implicated as accused without satisfying the test of section 141 of the N.I. Act without attributing any specific role against them.*

17. Before going to further details, let me state the observation made by the trial court while delivering impugned judgment in C 23410 of 2008 on 08.11.2019. Learned Trial court relied upon the judgment of ***Lalita Kumar Sharma Vs. State of UP and another***, **(2008) 5 SCC 638** and held that even if for the sake of argument if it is presumed that there was a settlement on 02.08.2008 during the pendency of the case and in terms of the settlement the complainant accepted 9 cheques amounting to Rs. 36,13,174/-, the defence will not get any benefit as the said so called settlement dated 02.08.2008 did not fructify dishonour of cheques. The trial court also had taken up for consideration the plea made by the accused while he was examined under section 313 of the Cr.P.C. that the cheques were issued towards security cheque but the Magistrate turned down such defence even after considering the documents in support of payment filed by accused during pendency of the proceeding and relied upon exhibit 8 in the form of accounts statement from the month of August, 2006 to 31.03.2010

which disclose the total liability to the tune of Rs. 6,69,68031/- as on 31.03.2010. Trial court further referred that the accused company by writing letter dated 21.05.2008 marked exhibit-9 addressed to the complainant company admitted the liability to pay sum of Rs. 10,40,5,720/- for goods supplied to them vide purchase order no. Simoco PO/003/004/005 all dated 07.01.2008. Therefore the trial court convinced to hold that the accused has failed to rebut the presumption under section 118 A, 138 and 139 of N.I. Act by adducing cogent evidence and on the contrary on 02.08.2008 the accused persons themselves in writing admitted the existing debt and liability of Rs. 36,13,174/-. So far as other points are concerned the court held that the cheques were presented within the statutory period and the bank return memo has been duly proved and the demand notice was given within the statutory period and he further held that the demand notice was shown to be delivered to the accused company on 26.07.2008 as appearing from the exhibit 6/1 and therefore the trial court convicted the accused as all the ingredients of the offence under section 138 has been proved against the accused beyond doubt.

18. When the matter came up before the appellate court he held that from exhibit 3 and 8 the liability of the accused towards the complainant is fully established. Exhibit A series does not show that those are related to the dishonoured cheques being made good by payment but talks about the continuous business deals. Appellate court further held that learned Magistrate considered all relevant facts in issue and has dealt with every issues with cogent reason. Appellate court further held that the accused failed to establish under reverse onus clause that they have made payment

of those amounts which are in disputes. He further held that there is no confirmation of the outstanding on the accounts with the complainant in favour of the accused which was admitted by the witness of the accused giving no room to disbelieve the evidence of the complainant.

19. When the trial court and the appellate court arrived at the specific concurrent factual finding that the cheques in question pertains to legally enforceable debt and when both the trial court and the appellate court rejected the plea of the petitioner convict that the amount involved with the impugned cheque has been repaid, the revisional court's jurisdiction to interfere with such concurrent findings is limited. It is well settled that while dealing with an application under section 528 of the BNSS, the High Court does not in the absence of perversity upset concurrent factual findings and the High Court being a Revisional Court is not supposed to re analyse or re interpret the evidence on record.

20. In the case of ***Southern Sales and Services Vs. Sauermilch Designed and handles gambh*** reported in **(2008) 14 SCC 457** it was held that the revisional court will not interfere even if a wrong order is passed by a court having jurisdiction in the absence of a jurisdictional error. Needles to say that section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under section 139 of the N.I. Act is a presumption of law as distinguished from presumption of facts. The obligation on the prosecution in the instant case has been discharged with the help of exhibited documents in support of their contention that the impugned cheques involved legally enforceable debts and therefore, the burden shifted upon the accused to adduce

evidence showing the reasonable possibility of the non existence of the presumed fact. In ***Kumar Export Vs. Sharma Carpets,*** reported in **(2009) 2 SCC 513** Supreme Court reiterated that there is a presumption that every negotiable instrument duly executed is for discharge of a debt or liability but the presumption is rebuttable by proving the contrary in the facts of circumstances of the present case. It appears that the courts below relied upon exhibit 8 in the form of accounts statement from the month of August, 2006 to March 2010 which discloses the total liability to the tune of Rs. 6,59,68,031/- and at the same time disbelieved exhibit A series as it failed to disclose that they were related to the dishonoured cheques. Therefore, the courts below came to a finding that the petitioner has miserably failed to discharge his burden. The scope of interference with the impugned judgment and the order of conviction and sentence as passed by the trial court and affirmed by the appellate court is extremely limited while exercising the jurisdiction of this court either under section 401 or under section 482 of the Cr.P.C. It is evident from the judgment passed by both the courts below that they have dealt with the evidences adduced by the respective parties and they have also dealt with the issues of repayment as canvassed herein by the petitioners. It is well settled that merely there is a scope of appreciating the evidence on record and/or facts of the case in a different manner than in which the court below appreciated the same, is no ground for interfering with the impugned judgment and order passed by the courts below unless it comes within the ambit of perversity.

21. In ***Sangabij Tari Vs. Kishore S. Borcer and another*** reported in **2025 SCC Online SC 2069** Supreme Court has made clear observation in para 27 and 28 as follows:-

> ***27.****It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings (see : Bir Singh v. Mukesh Kumar [(2019) 5 Comp Cas-OL 560 (SC); (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138.]). This court is of the view that it is not for the revisional court to re-analyse and re-interpret the evidence on record. As held by this court in Southern Sales and Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457; 2008 SCC OnLine SC 1495.] , it is a well-established principle of law that the revisional court will not interfere, even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error.*
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> ***28.*** *Consequently, this court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the trial court and the sessions court.*
> *Failure of accused to reply to notice leads to an inference*

22. So far as the alleged refund as raised by the petitioner to circumvent claim of the complainant is purely a question of fact which has been finally adjudicated by the last court of facts and therefore, does not involve any question of law. Courts below relied upon exhibit-8 and also came to a finding that there has been continuous transaction between the parties since August 2006 and continued till 31st March, 2010 by which the petitioner no.1 was duty bound to make payment of the price of the goods and other charges in terms of the different clauses of exhibit 2 i.e. the mother agreement dated 23.08.2006 and the complainants specific case is that there has been continuous non-payment/dishonoured of cheques which has not been rebutted by the petitioners specially when the liability of the petitioners is not restricted to only price of goods financed under High seas sale agreement but they are also liable to make payments as agreed by the OP interms of the agreements entered between the parties.

23. Learned counsel for the OP took a specific plea that on perusal of the exhibit 9 and 10 it appears that the same completely dislodges alleged payment of Rs. 57,720/- and Rs. 2,52,200/- by a cheque dated 21.05.2008 and 23.09.2008 in connection with the present transaction because the settlement agreement was executed subsequent to the issuance of the above-mentioned cheques on 02.10.2008 and therefore cannot cover the debt part of the settlement agreement. The payment made by RTGS also does not match with the amount and it is alleged that it has been used in connection with transaction which is subject matter of another application being CRR 3940 of 2023. So far as the reflection of the said amount in the balance sheet of the complainants company is concerned, I am of the view that even if there was any non disclosure in the balance sheet of the company's account, it may give rise to other proceeding against the complainant company but such non disclosure does not render the debt as non-existing or non-est nor it will render the proceeding under the N.I. Act infructuous unless the petitioner assailed the same at the first instance and by positive evidence can rebut the presumption under section 139 of the N.I. Act.

24. Moreover mere not disclosure of debts in the balance sheet of complaint does not amount to discharge of burden on the part of accused in the absence of rebuttal evidence to establish that there exists no preponderance of probability abut alleged debt. On the contrary in the instant case seven cheques in question marked exhibit 3 were issued in discharge of liability. The signature on the cheques were never denied. NO reply was given to the demand notice. Exhibit-7 (letter dated 02.12.2008)

was issued for relinquishing the debt covered by the first seven dishonoured cheques and also promised the repayment of the debt by nine other cheques. Petitioners miserably failed to show that payment of Rs. 57,720/- and 2,52,200/- are in connection with present case. They purposely used same transaction through RTGS dt. 04.12. 2008 for dislodging two different transactions which are subject matter of two different proceeding and also miserably failed to establish that impugned cheques were given towards security and does not involve any legally enforceable debt. Therefore the petitioners contention that the impugned cheque does not involve any legally enforceable debt or that it was issued as security or that excess amount has been paid by way of settlement, have no leg to stand nor have any merit for consideration by this High Court in the instant application.

25. However, Mr. Chatterjee as a last resort has argued that the first complaint subsumed the second cause of action, once the complainant entered into compromise during pendency of the prosecution and accepted subsequent cheques and thereby relied upon the decision of ***Gimpex Pvt. Ltd. Vs. Manoj Goyel*** reported in **(2022) 1 SCC 705.** Needless to say that in the **Gimpex Pvt Ltd. Case (Supra)** case a second complaint was initiated by the appellant under section 138 of the N.I., Act when the second set of cheques issued in pursuance of the deed of compromise having been dishonoured, which is reflected from para 11 of the judgment.

26. Therefore, in para 24 of the judgment, the court has framed the question as to whether parallel prosecution arising from a single transaction under section 138 of the N.I. Act can be sustained, because in that case a set of cheques were dishonoured leading to filling of the first complaint and

the parties thereafter entered into a deed of compromise to settle the matter. while the first complaint was pending the cheques issued pursuant to the compromise deed were dishonoured leading to the second complaint under section 138 of N.I. Act and both proceedings were pending simultaneously and in the aforesaid background the Supreme Court took a different view.

27. But the present case involves a significant factual difference wherein the complainant/OP herein did not lodged any complaint when the second set of cheques on the basis of alleged settlement have got dishonoured. The law applicable in this field and also relied by the Trial Court in ***Lalit Kumar Sharma Vs. State of U.P.*** (supra) bars subsequent prosecution on cheques issued pursuant to compromise entered between the parties during pendency of a proceeding. The judgment passed by Three Judges Bench in ***Gimpex Pvt. Ltd.*** (supra) has not overruled ***Lalit Kumar Sharma*** (supra) judgment but has been distinguished factually and held to be not applicable in the case of **Gimpex Pvt. Ltd.** (supra).

28. It is settled proposition of law that every judgment would apply on the factual situation in the background of which such a decision is rendered. Moreover if the argument of the petitioner is accepted and the impugned prosecution held to be non-est only on the ground that the petitioner did not choose to lodge complaint in respect of second cause of action, then the complainant will be remediless against the crime committed by the petitioner and shall lead to subverting of the administration of justice in connection with the instant case.

29. In ***Charan Singh and Ors. Vs. state of U.P.*** reported in **(2004) 4 SCC 205** Supreme Court Cautioned that there is always peril in treating the

words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterance are made in the settings of the facts of a particular case, circumstantial flexibility one additional or different fact may make world of difference between conclusion in two cases. The same view reiterated earlier by the Apex court in a Three Judges Bench judgment in the case of the ***Punjab University Chandigarh Vs. Bijay Singh lamba and ors.*** reported in **(1976) 3 SCC 344**. Therefore in view of well settled principle of law that a decision is an authority for what it decides and not what can logically be deduced therefrom, I am of the view that the judgment of Three Judges bench in **Gimpex Pvt Ltd** (supra) has no manner of application in the facts and circumstances of the present case

30. Therefore I do not find any merit in the instant application and therefore it is liable to be dismissed.

31. CRR 3762 of 2023 thus stands dismissed. In View of dismissal of CRR 3762, the other application being **CRR 3970 of 2023** also stands dismissed on the same analogy and also in view of the fact that there is no document/proof produced by the petitioners that the enforceable debt has been liquidated.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR.AJOY KUMAR MUKHERJEE, J.)