Delhi High Court

Sh. Rajpal Naurang Yadav & Anr vs M/S. Murli Projects Pvt. Ltd & Anr on 10 July, 2026

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

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

% Judgment reserved on: 02.04.2026

Judgment pronounced on: 10.07.2026

Judgment uploaded on: 10.07.2026

+ CRL.M.C. 4870/2024 & CRL.M.A. 18570/2024, CRL.M.A. 31260/2025 & CRL.M.(BAIL) 338/2026

+ CRL.M.C. 4871/2024 & CRL.M.A. 18573/2024

+ CRL.M.C. 4872/2024 & CRL.M.A. 18576/2024

+ CRL.M.C. 4882/2024 & CRL.M.A. 18614/2024

+ CRL.M.C. 4873/2024 & CRL.M.A. 18579/2024

+ CRL.M.C. 4883/2024 & CRL.M.A. 18617/2024

+ CRL.REV.P.799/2024,CRL.M.A.18632/2024 & CRL.M.A. 18635/2024

+ CRL.M.C. 4876/2024 & CRL.M.A. 18588/2024

+ CRL.M.C. 4878/2024 & CRL.M.A. 18602/2024

+ CRL.M.C. 4886/2024 & CRL.M.A. 18630/2024

+ CRL.REV.P. 798/2024 & CRL.M.A. 18625/2024, CRL.M.A. 18628/2024 & CRL.M.A. 11121/2025

+ CRL.M.C. 4879/2024 & CRL.M.A. 18605/2024

+ CRL.M.C. 4880/2024 & CRL.M.A. 18608/2024

+ CRL.M.C. 4881/2024 & CRL.M.A. 18611/2024

+ CRL.M.C.4884/2024 & CRL.M.A. 18620/2024

+ CRL.M.C. 4885/2024 & CRL.M.A. 18623/2024

+ CRL.REV.P. 797/2024, CRL.M.A. 18593/2024 & CRL.M.A. 18596/2024

+ CRL.REV.P. 800/2024, CRL.M.A. 18636/2024 & CRL.M.A. 18639/2024

+ CRL.REV.P. 801/2024, CRL.M.A. 18640/2024, CRL.M.A. 18643/2024

+ CRL.REV.P. 802/2024, CRL.M.A. 18644/2024,

CRL.M.A. 18647/2024

\+ CRL.REV.P. 803/2024, CRL.M.A. 18648/2024, CRL.M.A. 18651/2024 Signature Not Verified CRL.M.C. 4870/2024 & connected matters Page 1 of 108 Digitally Signed By:ZEENAT PRAVEEN Signing Date:10.07.2026 15:43:18

SH. RAJPAL NAURANG YADAV & ANR. .....Petitioners

Through: Mr. Saurabh Trivedi, Mr. Upadhaya, Mr. Kumar Singh and Mr. Pratap Singh, Advocates

versus

M/S. MURLI PROJECTS PVT. LTD & ANR. .....Respondents

Through: Mr. Avneet Singh Sikka and S.K. Sharma, Advocates R-1.

Naresh Kumar Chahar, for the State

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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1. The present batch of twenty-one petitions emanates from seven complaints instituted under Section 138 of the Negotiable Instruments Act, 1881 [hereafter ‗NI Act'] wherein the petitioners stand convicted and sentenced. As the petitions arise from a common factual matrix and raise identical issues, they are being adjudicated and disposed of by this common judgment.

FACTUAL BACKGROUND A. Agreements between the Complainant and the Convicts

2. The brief facts of the case, as borne out from the record and the petitions, are that in the year 2010, the CEO of the complainant company, namely M/s Murli Projects Private Limited, had approached petitioner no. 1, Rajpal Yadav, on behalf of M/s Shree Naurang Godavari Entertainment Limited, as both belonged to the same district in Uttar Pradesh. It is the case of the petitioners that the complainant had expressed his desire to finance a film titled ‗Ata Pata Lapata' [hereafter ‗the Film'], which was being produced by M/s Shree Naurang Godavari Entertainment Limited and was then nearing completion. According to the petitioners, the complainant company, through its CEO, Shri Madho Gopal Aggarwal, invested a sum of ₹5,00,00,000/- in the Film as one of its financiers and, in return, sought a

profit of ₹3,00,00,000/-, to which M/s Shree Naurang Godavari Entertainment Limited had agreed. It is further the case of the petitioners that, following the aforesaid investment, the complainant company got M/s Shree Naurang Godavari Entertainment Limited to execute a written agreement dated 30.05.2010, stipulating repayment of a total amount of ₹8,00,00,000/- , inclusive of ₹3,00,00,000/- towards profit, within ten months, i.e. by 30.03.2011, contingent upon the release of the Film. The agreement was executed by M/s Shree Naurang Godavari Entertainment Limited, while petitioner no. 1, Rajpal Naurang Yadav, and petitioner no. 2, Radha Rajpal Yadav, signed the same as guarantors. The petitioners contend that, although the agreement was essentially an investment agreement, it was inadvertently or deliberately titled as an ‗Inter Corporate Loan Agreement' by the complainant. A copy of the principal agreement dated 30.05.2010 is extracted hereunder:

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> *3. Further, owing to unforeseen delays in the release of the Film, it is stated that the parties extended the deadline for repayment from*

31.03.2011 to 31.12.2011 and revised the amount payable to ₹9,38,06,332/- by way of a First Supplementary Agreement dated 21.09.2011. The said agreement is extracted hereunder:

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> *4. It is the case of the petitioners that further delays necessitated the execution of a Second Supplementary Agreement dated 04.04.2012, whereby the repayment deadline was extended to 30.09.2012 and the amount payable was revised to ₹10,72,52,745/-.*

A copy of the Second Supplementary Agreement dated 04.04.2012 is extracted hereunder:

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> *5. The petitioners further state that, owing to continued delays, the parties entered into a Third Supplementary Agreement dated 09.08.2012, whereby the repayment deadline was further extended to 28.02.2013 and the amount payable was revised to ₹11,10,60,350/-.*

According to the petitioners, petitioner no. 2, as a signatory of M/s Shree Naurang Godavari

Entertainment Limited, had issued 08 post- dated cheques as security. It is their case that the release of the Film was a pre-condition for payment of any amount by M/s Shree Naurang Godavari Entertainment Limited to the complainant company and, therefore, any legal liability in respect of the said amount could have arisen only after the release of the Film and not prior thereto.

6. It is also the case of the petitioners that the aforesaid security cheques were to be returned by the complainant company to M/s Shree Naurang Godavari Entertainment Limited upon payment being made and were never intended to be presented or encashed. The petitioners further state that 07 out of the 08 cheques issued pursuant to the Third Supplementary Agreement are the cheques in question and form the subject matter of the present complaints under Section 138 of the NI Act. A copy of the Third and final Supplementary Agreement dated 09.08.2012 executed between the parties is extracted hereunder:

> *Digitally Signed By:ZEENAT PRAVEEN Signing Date:10.07.2026 15:43:18 Digitally Signed By:ZEENAT PRAVEEN Signing Date:10.07.2026 15:43:18 B. Civil & Criminal Proceedings Instituted by the Complainant*

> *7. The petitioners further allege that the Film was ready for release by September/October, 2012 and that its music album had already been launched in Mumbai, with the release of the Film scheduled for 12.10.2012. According to the petitioners, instead of assisting M/s Shree Naurang Godavari Entertainment Limited in ensuring the successful release and promotion of the Film so that it could generate revenue, the complainant company, even before the due date for repayment, i.e. 28.02.2013, instituted a civil suit, being CS(OS) No. 3037/2012, before this Court. The suit was initially filed as a suit for injunction and was subsequently amended into a suit for recovery of the amount claimed under the Third Supplementary Agreement, which, according to the petitioners, was in breach of the terms of the said agreement dated 09.08.2012. The petitioners further state that, on 03.10.2012, learned counsel appearing for the complainant company had submitted before this Court in the aforesaid suit that the plaintiff would amend the plaint to seek recovery of the amount alleged to be due from the present petitioners and would deposit the requisite court fee within two working days.*

At that stage, the Film was scheduled to be released on 12.10.2012. Based on the aforesaid submissions, this Court directed the present petitioners, who were defendants in the said suit, not to create any third-party interest in the negative prints of the Film. They were also restrained from assigning the music, audio and video rights, including CD/DVD/Internet rights, satellite rights, channel rights and export/international rights, to any person without prior permission of the Court until further orders. The order dated 03.10.2012 passed by this Court in the aforesaid suit is extracted hereunder:

> *—The learned counsel for the plaintiff states that the plaintiff would amend the plaint so as to claim recovery of the amount which it claims to be due to it from the defendants and would pay the requisite court fee to the same within two working days. The case of the plaintiff is that under the Agreement between the parties, the defendants had agreed to secure the money paid to them by the plaintiff by creating a lien on the negative of the film _Ata Pata Laapata' and they had also agreed to assign the music audio and video rights, CD/DVI/Internet rights, satellite rights, channel rights, export/international rights to the plaintiff as a security for repayment of the loan taken from it. The learned counsel appearing for the plaintiff further states that the movie is scheduled to be released on 12th October, 2012.*

> *Be issued summons in the suit and notice of the application to the defendants for 11th October, 2012.*

> *In the meantime, the defendants shall not create any third party interest in the negative prints of the film _Ata Pata Laapata' and shall not assign music audio and video rights, CD/DVI/Internet rights, satellite rights, channel rights, export/international rights to anyone without prior permission of the Court, till further orders. This order will operate from the time it is served upon defendants along with suit summons and notice of the application. The plaintiff is directed to take dasti process and get the defendants served at its own responsibility within one week. The Registry is directed to give dasti process to the plaintiffs within two working days. The plaintiff is directed to comply with provisions of Order 39 Rule 3 of CPC within 24 hours. Dasti...॥*

> *8. It is the case of the petitioners that, in the meantime, during the pendency of the aforesaid suit before this Court, the complainant company, in January-February, 2013,*

presented all the security cheques for encashment without informing the petitioners and without obtaining leave of this Court. Thereafter, seven separate complaints under Section 138 of the NI Act came to be filed by the complainant company against M/s Shree Naurang Godavari Entertainment Limited and the present petitioners before the learned Additional Chief Metropolitan Magistrate (East), Karkardooma Courts, Delhi [hereafter 'Trial Court']

9. In the said complaints, it was alleged that, in April, 2010, petitioner no. 1 had approached the complainant seeking financial assistance for the completion of the Film 'Ata Pata Lapata' and, at his request, the complainant had agreed to provide such assistance. It was further alleged that, after obtaining a loan of ₹5 crores for completion of the Film, petitioner nos. 1 and 2, in their individual capacities, along with M/s Shree Naurang Godavari Entertainment Limited, had stood as guarantors. According to the complainant, under the terms of the agreement, M/s Shree Naurang Godavari Entertainment Limited and the petitioners had undertaken to pay, without demur and on demand, a sum of ₹8 crores, comprising ₹5 crores towards the principal amount and ₹3 crores towards the agreed return. The complainant further alleged that, in consideration thereof, M/s Shree Naurang Godavari Entertainment Limited and petitioner nos. 1 and 2, as guarantors, had also executed a promissory note and had issued post-dated cheques towards repayment of the loan amount. It was also pleaded that, since M/s Shree Naurang Godavari Entertainment Limited was unable to adhere to its financial commitments regarding repayment, the loan was rescheduled on three occasions by way of separate agreements dated 21.09.2011, 04.04.2012 and 09.08.2012. According to the complainant, under the last agreement dated 09.08.2012, the petitioners and M/s Shree Naurang Godavari Entertainment Limited had agreed to pay a total sum of ₹11,10,60,350/-, inclusive of the principal amount and the interest accrued thereon. It was alleged that all the earlier post-dated cheques were returned and that petitioner no. 2, in her capacity as Director of M/s Shree Naurang Godavari Entertainment Limited, had issued eight fresh cheques aggregating to ₹11,10,60,350/- in favour of the complainant. Out of these, one cheque was for an amount of ₹60,60,350/-, whereas the remaining seven cheques, each for an amount of ₹1.05 crores, form the subject matter of the present seven complaints. The complainant further alleged that, owing to disputes between the parties concerning the audio and music rights of the Film, it had approached

the High Court of Delhi seeking a stay on the release of the Film. However, upon an undertaking that cheques to the extent of ₹7 crores would be honoured, the release of the Film was permitted. It was further averred that all the seven cheques in question were subsequently dishonoured with the remarks _Funds Insufficient', whereafter separate legal notices were issued in respect of each dishonoured cheque. According to the complainant, despite service of the said legal notices, the petitioners failed to make payment of the cheque amounts.

10. The complainant had also placed before the learned Trial Court, in a tabular form, the particulars of the cheques and the legal notices issued in respect thereof, which read as under:

11. On 21.04.2013, a Consent Agreement came to be executed between the complainant and M/s Shree Naurang Godavari Entertainment Ltd., whereby the parties arrived at a full and final settlement of their disputes. Under the said settlement, M/s Shree Naurang Godavari Entertainment Ltd. and M/s Naurang Godavari Pvt. Ltd. agreed to jointly and severally pay a total amount of ₹10.40 crores to the complainant, M/s Murli Projects Pvt. Ltd. It was recorded that a sum of ₹40 lakhs had already been paid through RTGS and the balance amount of ₹10 crores was to be paid in instalments, namely, ₹5 crores on or before 31.07.2013, ₹3 crores on or before 31.12.2013, ₹1 crore on or before 30.06.2014 and the remaining ₹1 crore on or before 30.09.2014. For securing and effectuating the aforesaid settlement, M/s Shree Naurang Godavari Entertainment Ltd. issued four post-dated cheques, namely, cheque no. 013076 dated 31.07.2013 for ₹5 crores, cheque no. 013077 dated 31.12.2013 for ₹3 crores, cheque no. 013078 dated 30.06.2014 for ₹1 crore and cheque no. 013079 dated 30.09.2014 for ₹1 crore, all drawn on Axis Bank Ltd., Malad (East), Mumbai. The Consent Agreement dated 21.04.2013 is extracted hereunder:

—THE PARTIES HERETO ARE AGREED AS FOLLOWS:

1. Whereas this Hon'ble Court had passed the interim orders dated 11.10.2012 and 1.11.2012 in the present suit.

2. Whereas the contemnor i.e. M/s. Shree Naurang Godavari Entertainment Ltd., Shri Rajpal Navrang Yadav, Mrs. Radha Rajapal Yadav, and Shree Naurang Godavari Edutainment Pvt. Ltd. had not complied with the undertakings provided to this Hon'ble

Court.

3. Whereas the parties have post committing the contempt of this Hon'ble Court's orders, have mutually negotiated a full and final settlement in the following manner.

a. The contemnor Shree Naurang Godavari Entertainment Ltd., Shri Rajpal Navrang Yadav, Mrs. Radha Rajapal Yadav, and Shree Naurang Godavari Edutainment Pvt. Ltd. (defendants in the Suit) do hereby solemnly undertake before this Hon'ble Court that they shall jointly or severally pay a total sum of Rs.10.40 crores (Rupees ten crores forty lacs) to Murli Projects Pvt. Ltd. of which Rs.40 lacs (Rupees forty lacs) has already been paid through RTGS. The balance sum of Rs.10 crores (Rupees ten crores) shall be paid in the following manner:

i. Rs.5 crores (Rupees five crores) shall be paid by the Contemnors jointly or severally to Murli Projects Pvt. Ltd. on or before 31.7.2013.

ii. Rs.3 crores (Rupees three crores) shall be paid by Contemnors jointly or severally to Murli Projects Pvt. Ltd. on or before 31.12.2013.

iii. Rs.1 crore (Rupees one crore) shall be paid by the Contemnors jointly or severally to Murli Projects Pvt. Ltd. on or before 30.6.2014.

iv. Rs.1 crore (Rupees one crore) shall be paid by the Contemnors jointly or severally to Murli Projects Pvt. Ltd. on or before 30.9.2014.

b. In order to secure Murli Projects Pvt. Ltd., the contemnors have in advance provided 4 (four) post dated cheques in the following manner issued by M/s. Shree Naurang Godavari Entertainment Ltd., details of the cheque are as follows:

i. Cheque No. 013076 dated 31.7.2013 for Rs.5 crores drawn on Axis Bank Ltd. Malad (E), Mumbai.

ii. Cheque No. 013077 dated 31.12.2013 for Rs.3 crores drawn on Axis Bank Ltd. Malad (E), Mumbai.

iii. Cheque No. 013078 dated 30.6.2014 for Rs.1 crore drawn on Axis Bank Ltd. Malad (E), Mumbai.

iv. Cheque No. 013079 dated 30.9.2014 for Rs.1 crore drawn on Axis Bank Ltd. Malad (E), Mumbai.

4. The Contemnors do hereby solemnly undertake that they shall endeavour to pay the above amounts on or before the above cut off date, failing which Murli Projects Pvt. Ltd. shall be at liberty to encash the above 4(four) post dated cheques on the respective dates which the Contemnors undertake before this Hon'ble Court that the same shall be honoured on presentation.

5. On payment of the above amounts, the present suit shall stand withdrawn by Murli Projects Pvt. Ltd. and interim order passed by this Hon'ble Court on 11.10.2012 and 1.11.2012 shall stand vacated.

6. Murli Projects Pvt. Ltd. has instituted 8 (Eight) complaints under Section 138 N.I. Act against the above contemnors before Addl.

Chief Metropolitan Magistrate, Karkardooma in respect of Cheque Nos. 021677, 021678, 021679, 021680, 021681, 021682, 021683 and 021684 issued by the said contemnors. The Ld. Court has issued summons in the said 138 N.I. Cases. However, in view of the above settlement, till 31.7.2013, Murli Projects Pvt. Ltd. shall ensure that no coercive steps are taken in respect of their 138 N.I.A cases. In case the cheque issued for the payment of Rs.5 crores (Rupees five crores) is encashed or payment is made otherwise of Rs.5 crores (Rupees five crores) prior to 31.7.2013 then Murli Projects Pvt. Ltd. shall not take any coercive steps in respect of these cheques till 31.12.2013 and similarly steps will be taken in this regard in respect of the subsequent two cheques dated 30.6.2014 and 30.9.2014. In case any of the 4 payments are not made, then Murli Projects Pvt.

Ltd. shall be at liberty to proceed with the said criminal case against the Contemnors and others in accordance with law. In case the payment of Rs.10 crores is received in total as per the above schedule ending on 30.9.2014 then Murli Projects Pvt. Ltd. shall withdraw the above criminal cases instituted against the contemnors.

7. In case any of the payments as per the above schedule is not received by Murli Projects Pvt. Ltd. it shall be deemed that the contemnors are in contempt of the orders passed by this Hon'ble Court on 11.10.2012 and 1.11.2012 and also the contempt proceeding filed by the

Murli Projects Pvt. Ltd. on 18.3.2013 which shall stand revived to their original status and the original amounts as per the original agreement with supplementary agreements shall stand revived against the contemnors.

8. The contemnors are endeavoring to come up with a fresh cinematograph film or a remake film or refurbish film or re-edited film out of the earlier film called "Ata Pata Laapata". The contemnors shall be free to negotiate with third parties in respect of this newly developed film provided, the payment of Rs.5 crores is made to Murli Projects Pvt. Ltd. on or before 31.7.2013. In case the said payment is received by Murli Projects Pvt. Ltd., then Murli Projects Pvt. Ltd. shall have no right, interest and cause of action in respect of the said film "Ata Pata Laapata" or its regenerated version in any form.

9. The Contemnors in order to secure the above payments to Murli Projects Pvt. Ltd. has already issued the post dated cheques as mentioned hereinabove, however in order to further satisfy Murli Projects Pvt. Ltd., the above contemnors are issuing undertakings to this Hon'ble Court in the manner already done before. Copies of the undertakings are enclosed herewith.

10. In case there are any amount deposited with this Hon'ble Court as per the interim orders dated 11.10.2012 and 1.11.2012 or any amounts are deposited in future, the same shall stand released to the contemnor on or after the first payment of Rs.5 crores (Rupees five crores) to Murli Projects Pvt. Ltd. as per:‖

12. Subsequent to the execution of the aforesaid settlement agreement, the petitioners preferred FAO (OS) No. 267/2013 before the Division Bench of this Court, assailing the order dated 13.05.2013 passed in IA No. 5427/2013 in CS (OS) No. 3037/2012. By order dated 06.08.2013, the Division Bench disposed of the said appeal while taking on record and validating the Consent Agreement dated 21.04.2013. The rights of the parties, particularly the right of the complainant to seek appropriate remedies in the event of breach of the settlement terms, were expressly reserved.

13. It is, therefore, the case of the petitioners that once the Consent Agreement dated 21.04.2013 had been executed and subsequently recognised by the Division Bench of this Court vide order dated 06.08.2013, with liberty reserved to seek remedies in case of its breach, the cause of action arising from the alleged dishonour of the cheques issued under

the Third Supplementary Agreement dated 09.08.2012 ceased to survive and stood substituted by a fresh cause of action flowing from the Consent Agreement itself. The petitioners have drawn the attention of this Court to the order dated 06.08.2013, which is reproduced hereunder:

> *—Learned counsel for the parties submit that inter se disputes were settled in terms of settlement dated 21.4.2013 which was recorded in the order of the Court dated 24.5.2013. It is submitted that the appellant was to pay a sum of Rs. 5,00,00,000/- in compliance by 31.7.2013. The appellant did not do so; the parties have since agreed to extend the time and agreed to modify the term with regard to the first payment which was to be made on 31.7.2013 i.e. the terms of clause 3(a)(i). It is submitted that the said amount of Rs.*

5,00,00,000/- is sought to be paid to the respondents through three cheques i.e. cheque bearing No. 013113 dated 05.9.2013 amounting to Rs. 2,00,00,000/-, cheque bearing No. 013114 dated 25.9.2013 amounting to Rs. 3,00,00,000/- and cheque bearing No. 013115 dated 25.9.2013 amounting to Rs. 20,00,000/-. It is agreed by the parties that the rest of the terms shall bind them especially the petitioner. The undertaking of Mr. Rajpal Navrang Yadav and Ms. Radha Rajpal Yadav, both dated 21.4.2013 are on the record which shall be treated as undertaking given to the Court; to the extent that they would make payment of a sum of Rs. 5,00,00,000/- and to the extent the terms shall stand modified.

It is further agreed by counsel for the parties that upon receipt of the entire amount agreed in terms of the settlement, all disputes should be deemed settled and that the present appeal can be disposed off. Counsel for the respondent further states that in the event of default by the appellant, it would be open to the respondent to seek enforcement of the undertaking given to this Court on 21.4.2013 (these are found at page nos. 508 to 511 of the paperbook). In the eventuality of non-compliance of terms of settlement, the respondent can seek enforcement and execution of the undertaking in accordance with law.

The appeal is disposed off accordingly. The rights of the parties especially of the respondents to seek remedial action for breach of the settlement terms, is expressly reserved.‖

14. The petitioners further state that, vide order dated 27.01.2016 passed in CS (OS) No. 3037/2012, this Court passed a consent decree for recovery of money in favour of the

complainant and against the petitioners in terms of the Consent Agreement dated 21.04.2013. It is pointed out that paragraph 5 of the said order specifically records that the original agreement and the supplementary agreements referred to in paragraph 7 of the Consent Agreement dated 21.04.2013 would not revive and that the complainant would stand satisfied upon receiving the amounts stipulated in the said Consent Agreement. According to the petitioners, once the Consent Agreement dated 21.04.2013 had been entered into and subsequently culminated in a consent decree, the complaints arising out of the dishonour of the earlier cheques ought to have been withdrawn or dismissed, it being their case that the earlier cause of action no longer survived in law. The learned counsel for the petitioners has also drawn the attention of this Court to the consolidated consent decree dated 27.01.2016 passed in CS (OS) No. 3037/2012, which reads as under:

> *—1. Originally the subject suit was a suit seeking injunctions by claiming rights of the plaintiff in the movie —Ata Pata Laapatall.*
>
> *2. Lot of water has flown under the bridge thereafter and effectively today the suit stands decreed but not for injunctions but for recovery of moneys as stated in the settlement terms dated 21.04.2013 entered into by the parties and signed by them.*
>
> *3. As per the consent terms/Agreement dated 21.04.2013, a Division Bench of this Court has passed Orders on 24.05.2013 and 06.08.2013 in FAO(OS) No.267/2013 and which in the opinion of this Court effectively disposes of the suit by compromise by passing a money decree.*

These Orders dated 24.05.2013 and 06.08.2013 in FAO(OS) No.267/2013 read as under:

> ** * **
>
> *4. The consent terms as found in the consent terms/Agreement dated 21.04.2013 are as under:*
>
> ** * **
>
> *5. There would be some ambiguity on account of the language contained in paragraph 7 of the consent terms/Agreement dated 21.04.2013, but the counsel for the plaintiff concedes that the original agreement and the supplementary agreement as mentioned*

in para 7 of the consent terms/Agreement dated 21.04.2013, do not revive, and the plaintiff will be satisfied on receiving the amounts as stated in the consent terms/Agreement dated 21.04.2013.

6. Accordingly, a consent decree of money is passed in favour of the plaintiff and against the defendants as per the terms recorded in the consent terms/Agreement dated 21.04.2013 and the decree will be drawn up in terms of the consent terms/Agreement dated 21.04.2013 as reproduced above on the plaintiff making payments of deficient court fee as stated below.

7. It is however clarified that merely because a money decree is passed in favour of the plaintiff, as per the consent terms/Agreement dated 21.04.2013, that will not mean that the plaintiff is not entitled to continue to pursue remedies that the plaintiff has on account of the violation by the defendant nos. 2 & 3 of undertakings which are given to this Court or the orders/directions which have been issued by the Court but not complied by the defendant no.2.

8. It is further made clear that so far as seeking recovery of amounts as per the money decree is concerned, the same will only take place in the execution proceedings seeking execution of the money decree which is passed today as per the consent terms/Agreement dated 21.04.2013.

9. It is also recorded that this Court is not expressing any opinion, one way or the other, with respect to the actions which the plaintiff seeks against the defendant nos. 2 & 3 inasmuch as, an appeal being Cont. App. (C) No.11/2013 is pending before a Division Bench of this Court against the Order of a learned Single Judge of this Court dated 03.12.2013 sentencing the defendant no. 2 to the imprisonment of 10 days. Issues with respect to finality of the Order dated 03.12.2013 in respect of imprisonment will be in terms of the final order or interim order which will be passed by Division Bench in Cont. App. (C) No.11/2013.

10. It is also made clear that attachment of the properties of the defendants in terms of the orders of this Court, will enure for the benefit of the plaintiff in the execution proceedings in view of Order XXXVIII Rule 11 of the Code of Civil procedure, 1908 (CPC).

Issues with respect to recovery of the amounts in favour of the plaintiff and against the defendants as per the consent terms/Agreement dated 21.04.2013 will be a subject matter of execution proceedings of execution of the money decree passed today.

11. Plaintiff will make up the deficiency with respect to the court fee on account of the money decree having been passed today in favour of the plaintiff and against the defendants for a sum of Rs.10.40 crores, and only on payment of the necessary court fee by the plaintiff, the money decree will be one which will be capable of being executed for the amounts payable under the money decree.

12. Since the attachment orders are continuing and there is a money decree in favour of the plaintiff and against the defendants, and of which today an amount of approximately Rs.8.5 crores is said to be due to the plaintiff, no orders can be passed today for the release of the passport of defendant no. 2 and such an application can always be filed in the execution petition which the plaintiff proposes to file for the execution of the money decree with respect to the balance amount of Rs.8.5 crores or such application can be filed after disposal of the Cont. App. (C) No.11/2013.

13. Suit is accordingly decreed and disposed of, subject, however, to the aforesaid terms and observations.

I.A. No.21054/2012 (u/O 39 R 2A CPC by the plaintiff) & Crl. MA. No.3403/2014 (u/s 340 Cr.PC by the plaintiff) List on 10th May, 2016.‖

15. Thereafter, on 06.05.2016, the complainant instituted Execution Petition No. 69/2016 before this Court seeking execution of the consent decree dated 27.01.2016 and recovery of the amounts payable under the full and final settlement arrived at between the parties. According to the petitioners, even after initiating execution proceedings on the basis of the Consent Agreement and the consent decree, the complainant did not withdraw the seven complaints under Section 138 of the NI Act. The learned counsel for the petitioners has drawn the attention of this Court to the order dated 06.05.2016 passed in Execution Petition No. 69/2016, which reads as under:

> *—3. In view of the order dated 27.1.2016 passed in CS(OS) No.3037/2012, it is observed that all orders of attachment passed in CS(OS) No.3037/2012 with respect to the bank*

> *accounts of the judgment debtors, the same will enure and continue to operate so far as the present execution proceedings are concerned. It is clarified that bank accounts of which reference is made in the present order as also in the attachment orders in CS(OS) No.3037/2012, will be those bank accounts mentioned in para 13 of the affidavit dated 12.1.2014 of the judgment debtor no.2 filed in CS(OS) No.3037/2012.*

> *4. Notice be issued to the judgment debtors, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 22nd August, 2016.॥*

16. The learned counsel for the petitioners submits that, during the trial of the seven complaint cases, the complainant had examined two witnesses, namely, CW-1 Rajiv Sharma and CW-2 Madho Gopal Aggarwal, both of whom were duly cross-examined by the petitioners. It is stated that the complainant had exhibited eight documents, marked as Ex. CW-1/1 to Ex. CW-1/8. The learned counsel contends that both the complainant's witnesses had concealed the factum of the Consent Agreement dated 21.04.2013 entered into between the parties and had not disclosed the same in their examination-in-chief. In this regard, the learned counsel has drawn the attention of this Court to the testimonies of CW-1 and CW-2 recorded before the learned Trial Court. It is further submitted that petitioner no. 1, Rajpal Naurang Yadav, entered the witness box as DW-1 and his statement was recorded on 21.04.2017 in defence evidence. The learned counsel has also referred to the testimony of the said witnesses.

17. It is further stated that, vide judgments dated 13.04.2018, the learned Trial Court convicted the petitioners in all the seven complaint cases under Section 138 of the NI Act. Thereafter, by orders on sentence dated 23.04.2018, petitioner no. 1, Rajpal Naurang Yadav, was sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹1.60 crores in each complaint case, and in default of payment of fine, to further undergo simple imprisonment for a period of six months. Out of the fine amount of ₹1.60 crores, a sum of ₹1,59,50,000/- was directed to be paid to the complainant and the remaining sum of ₹50,000/- was directed to be paid to the State in each complaint case. By the same orders on sentence dated 23.04.2018, petitioner no. 2, Radha Rajpal Yadav, was directed to pay a fine of ₹10 lakhs to the complainant in each complaint case and, in default of payment thereof, to undergo simple imprisonment for a period of three months.

18. The petitioners further state that, in the meantime, in Execution Petition No. 69/2016 and E.A. No. 360/2018, titled Murli Projects Private Ltd. v. Shree Naurang Godavari Entertainment Ltd. & Ors., the complainant sought execution of the consolidated consent decree dated 27.01.2016. Vide order dated 30.11.2018, this Court directed the detention of petitioner no. 2 in civil prison for a period of three months. The order dated 30.11.2018 passed in Execution Petition No. 69/2016 is extracted hereunder:

> *—1. The counsel for the judgment-debtors states that Mr. Anant Dattaram Lad whose Aadhaar Card is handed over in the Court and photocopy of which is kept on record and original returned is the owner of certain immovable property and is willing to sell the same for satisfying the judgment-debt of the judgment-debtors. A photocopy of the title documents of the property of Mr. Anant Dattaram Lad is handed over in the Court and is taken on record and a copy has been given to the counsel for the decree-holder.*

> *2. The counsel for the judgment-debtors states that the decree-*

holder may verify whether the decree-holder is interested in taking the said property in satisfaction / part satisfaction of the debt.

3. The judgment-debtor no.2 present in Court also undertakes to this Court that he will within one month of today either satisfy the entire judgment-debt or pay the first instalment of Rs.2 crores in terms of order dated 21st August, 2018 with interest as may be directed by the Court and if does not comply with this undertaking can be sent to prison.

4. The counsel for the decree-holder states that the judgment- debtors have dodged the decree already for a very long time and the decree be executed by imprisonment of the judgment-debtor no.2.

5. I am satisfied from the past conduct of the judgment-debtors that the judgment-debtors, inspite of being in a position to pay the decretal amount, are managing their affairs so as to avoid execution of the decree. The judgment-debtor no.2 is found to have acted in number of films and the explanation each time is, either of the monies therefor having been received earlier or the judgment-debtor no.2 performing without consideration.

6. The decree is ordered to be executed by detention of the judgment debtor no.2 Rajpal Navrang Yadav in civil prison for a period of three months. The judgment-debtor no.2 is

ordered to be taken into custody forthwith, to be detained in civil prison.

7. The Court Master to call for the marshal and handover the judgment debtor no.2 to the marshal for compliance of the order along with a copy of this order.

8. Since the decree-holder has not suggested any other mode of execution, the execution is closed with the aforesaid. Dasti under signature of Court Master.‖

19. Being aggrieved by the judgments of conviction and the orders on sentence passed by the learned Trial Court, the petitioners preferred seven criminal appeals, being Criminal Appeal Nos. 53/2018, 55/2018, 56/2018, 57/2018, 58/2018, 59/2018 and 60/2018, before the learned Sessions Court. The complainant, on the other hand, preferred seven criminal revision petitions, being Criminal Revision Nos. 124/2018, 125/2018, 126/2018, 127/2018, 128/2018, 129/2018 and 130/2018, assailing the order on sentence dated 23.04.2018.

20. The learned Special Judge, PC Act, East District, Karkardooma Courts, Delhi [hereafter ‗Sessions Court'], vide the impugned common judgment dated 21.01.2019, upheld the judgments of conviction dated 13.04.2018, while observing as under:

> *—APPRECIATION OF EVIDENCE AND ARGUMENTS AS WELL AS FINDINGS :-*

> *7. As per undisputed facts of the case, initially an agreement was executed between complainant and convicts on 30.05.2010 in respect of repayment of a loan extended by complainant in the sum of Rs.5 crores to the convicts. Six post dated cheques were issued by convicts for total sum of Rs.8 crores towards repayment of aforesaid loan along with interest. However, that promise could not be honored by the convicts. Thereafter, another supplementary agreement was executed between both the parties on 21.09.2011, referring to failure of convicts to make payment of Rs.8 crores as per previous agreement on the respective due dates. As per this supplementary agreement, complainant had agreed to receive amount of Rs.8 crores along with interest of Rs.1,38,06,332/- and thus, once again six post dated cheques were issued by convicts in favour of complainant for total sum of Rs.9,38,06,332/-. The last cheque was payable on 31.12.2011, however, once again convicts failed to make such payment. Therefore, another supplementary agreement was executed on 04.04.2012, under which fresh amount was fixed to be paid by convicts to complainant after addition of interest, for total sum of Rs.10,72,52,745/-*

> *and this time convicts issued 11 post dated cheques for aforesaid sum. The last cheque was payable on 30.09.2012. Once again, convicts failed to make payment of aforesaid amount and finally another agreement dated 09.08.2012 was executed between the parties vide which convicts undertook to pay total sum of Rs.11,10,60,350/- to the complainant towards clearing outstanding debts with interest. This amount was settled after adjustment of Rs.40 lacs paid by convicts to the complainant and after addition of interest for delayed period. Once again, convicts issued eight post dated cheques for total sum of Rs.11,10,60,350/-, the last cheque being payable on 28.02.2013. All these cheques were issued towards clearing the outstanding debt. However, on presentation of seven out of eight cheques given in pursuance to aforesaid agreement, same were dishonoured on the grounds of insufficient funds, which resulted into seven complaint cases in question being filed by the complainant. At the same time, complainant company also took civil remedy and a civil suit no.3037/2012 came into existence before High Court of Delhi for recovery of amount against the same liability. Before High Court of Delhi, once again parties settled their dispute on 21.04.2013, on the basis of which a consent decree was passed by Delhi High Court in aforesaid civil suit. This settlement had taken place basically in a contempt proceeding, because of failure of convict no.2 to comply with the undertakings given before Delhi High Court to make certain payments.*

> *8. In the present case, argument was raised before trial court as well as before this court that with execution of agreement dated*

21.04.2013 before High Court of Delhi, the agreement dated 09.08.2013 became null and void. Therefore, cheques in question also became redundant and without any liability. Argument was also advanced that since new cheques were given out of consent agreement before Delhi High Court, therefore, cheques in question could not be payable anymore. In the impugned judgments, ld. ACMM (East) has dealt with this argument and negated this argument.

9. It is borne out from clause 6 of the consent agreement dated 21.04.2013 itself, that it was agreed between the parties before Delhi High Court that in case payments undertaken in that agreement were not made, then complainant shall be at liberty to proceed with the criminal cases herein. As per that agreement, these cases were to be withdrawn by the complainant only on complete payment of Rs.10.4 crores, as agreed before Delhi High Court

in aforesaid agreement. Therefore, I do find that such argument of convicts is fallacious and without any merit. For same reasons, it cannot be said that trial court did not have jurisdiction to try the criminal complaints in hand, after consent decree being passed by High Court of Delhi. For the purpose of complaints in hand, the liability qua cheques in question should have been there on the date of presentation of the cheques and for the purpose of filing of complaints, the requirement was that despite lapse of 15 days from the date of service of demand notice, such payments were not made.

10. Another argument/ground was raised on behalf of convicts that the amount given by complainant was in the form of investment, rather than loan and hence, it was subject to profit/loss earned out of movie produced by convicts. Ld. ACMM (East) dealt with this argument also and rejected the same. To appreciate this argument, it is appropriate to refer to clause 4 of first agreement executed between the parties on 30.05.2010. This clause mentioned that the complainant was to extend inter corporate loan in the sum of Rs.5 crores to the convicts for the purpose of using the same in producing and releasing of a film 'Ata Pata Laapata'. Clause 6 of this agreement mentioned that convicts herein would refund the entire principle amount of Rs.5 crores lent by complainant on or before 31.03.2011. Clause 7 of that agreement further mentioned about liability of convicts herein to pay a sum of Rs.2.5 crores towards interest, cost etc. on the aforesaid loan and Rs.50 lac towards management cost of arranging the funds etc. Thus, as per clause 8 of that agreement, convicts herein had to refund Rs.8 crores to the complainant. Such specific terms of aforesaid agreement could not be substituted with oral assertion of the convicts. Furthermore, the subsequent agreements executed between the parties, were entered into by convicts herein with promise to return certain sum of money including interest on account of delay in payment. Convicts also went on to issue post dated cheques every time during execution of every agreement. Had it been actually the intention of the parties that complainant was investing Rs.5 crores in the production of aforesaid movie, then there could not have been any occasion for the convicts to promise to return a particular sum of money and to issue post dated cheques. In case of investment, if return for the complainant was to be dependent upon profit/loss earned by aforesaid movie, then there could not have been any occasion to quantify the money to be returned to the complainant, at the time of receiving such amount of Rs.5 crores itself. Therefore, I do not find any merit in this argument as well.

11. Another argument/ground was raised on behalf of convicts that the complainant

company had no license to advance finance and trial court failed to acknowledge the infirmities appearing in the balance sheet of the complainant company. In my opinion, these arguments cannot be entertained at all, because after having received loan from complainant company against interest, convicts are stopped from challenging the competence of complainant company to extend such loan. Convicts cannot usurp the loan amount on the basis of aforesaid grounds at all. Hence, this argument has to be rejected.

12. Convicts have also raised another argument/ground that transaction between the parties was illegal and against the provisions of Usurious Loan Act, because convicts were not liable to pay interest at the rate of 30%. It has to be appreciated that such terms of interest rate were consciously agreed upon by the convicts, while taking amount of Rs.5 crores from the complainant.Convicts time and again kept buying time to repay the amount, but they failed and every time they kept promising to return the amount with interest at such rate. Section 3 of the Usurious Loan Act, 1918, talks about a civil suit and provides that the court may reopen the transaction and declare the interest to be excessive. Therefore, such plea was to be taken by convicts in civil suit, which was pending before High Court of Delhi. If such declaration would have been passed by the civil court under that Act, there could have been a reason to entertain this plea in the present criminal proceeding. In absence of any such declaration of Civil court, such plea cannot be entertained herein.

13. Convicts have also referred about injunction being taken by complainant from High Court of Delhi and about fate of the movie on the box office. However, these grounds/arguments are insignificant in view of the agreed findings given that convicts were under debt to repay loan with interest to the complainant. Therefore, these factors do not have any bearing on the decision of these cases.

14. Convicts have also raised grounds that before presenting the cheques leading to criminal complaints in hand, complainant should have taken permission either from High Court of Delhi or from the convicts. However, once again I find such arguments to be merit less for simple reason that no law provides that to present cheque against liability or to institute a criminal complaint under Section 138 NI Act, the complainant has to take permission from the civil court or from the proposed accused persons. The only requirement to present the cheques was that the liability qua those cheques was subsisting. There was no change in that liability on account of proceedings being pending before High Court of Delhi.

15. In the additional grounds filed on the record, convicts further took plea that CW1/Sh. Rajiv Sharam was not a competent witness to depose on behalf of complainant company, because the resolution Ex.CW1/2 was executed on 28.01.2013, when there was no cause of action to file the complaints in hand. However, once again, I find that this argument is not impressive for the reasons that the resolution dated 28.01.2013 passed by Board of Directors of complainant, authorized Mr. Rajiv Sharma to sign and file affidavit as well as any pleading for filing criminal or civil cases on behalf of complainant company and to appear on behalf of complainant company as Attorney. He was also empowered to appear as witness on behalf of complainant company. It was not necessary that after accrual of cause of action to file criminal complaints herein, a fresh board resolution was required to be passed. Moreover, CW1 was expected to depose as per his personal knowledge and information or on the basis of record of the company. Therefore, to become a witness, in my opinion there is no requirement to be authorized by concerned company. Such requirement is only for the purpose of filing a complaint on behalf of a juristic person. Such requirement was duly satisfied in the cases in hand and hence, there is no merit in this argument.

16. Ld. counsel for convicts also referred to a judgment cited as Venkatesh Dutt v. M/s. M.S. Shoes East Limited, 2004 II AD (Delhi), to submit that after fresh cheques given out of consent agreement dated 21.04.2013, the criminal complaints instituted on the basis of previous cheque, could not be continued and were liable to be dismissed. It is worth to mention here that in the aforesaid case, Delhi High Court observed that :-

> *—by no stretch of imagination complaints under Section 138 NI Act relating to several cheques given by a party to the complainant on account of the agreement between the parties towards liability against initial cheque leading to the filing of original complaint can be allowed to go simultaneously.....Once the parties enter into an agreement during the pendency of such complaint or proceedings and complainant accepts the cheques given by the accused in lieu of the subject matter of original complaint, every cheque gives rise to a fresh cause of action if it, on presentation is dishonoured as in that case original complaint becomes extinct. Aggrieved person has a right to file as many complaints as many cheques were given to him. As every cheque under the Act provides an independent and fresh cause of action to the aggrieved person. Even otherwise, it is difficult to accept that two parallel proceedings, one emanating from the original cheque*

> *and others emanating from the terms of the agreement between the parties, can be allowed to run simultaneously. If the earlier complaint is also allowed to continue along with the subsequent complaints, then the very purpose of agreement between the parties and issuance of fresh cheques become meaningless as fresh cheques issued by a party are towards the original liability that gave rise to the initial complaint filed under Section 138 NI Act.॥*

17. The aforesaid observations would make it clear that such observations were made in case of two parallel proceedings going on for offence under Section 138 NI Act, out of one liability. Had it been a case herein that complainant would have also instituted fresh complaint on the basis of dishonor of cheques handed over on execution of consent agreement dated 21.04.2013, there would have been a ground to say that complainant was prosecuting convicts in two parallel proceedings simultaneously in respect of same liability. However, it is not the case herein. Complainant did not institute fresh complaint on the basis of cheques received on execution of consent agreement dated 21.04.2013, therefore, this argument is also not acceptable.

18. Another argument had been raised on behalf of convicts that trial court while imposing sentence of fine on convict no.3, mentioned about adjustment of amount paid in terms of consent decree, being adjusted towards the fine, from the date of order. It was argued that such adjustment should be of the amount paid during pendency of the complaint, before any court of law and not from the date of order of sentence. Reliance was placed upon case law titled as D. Purushotama Reddy & Anr. v. K.Sateesh, 2008 (4) RCR (Criminal). In the aforesaid case, Supreme Court was dealing with a question that whether any suit for recovery of money on a cheque issued by the defendant, but dishonored, the amount received by the plaintiff and creditor in a criminal proceeding should be adjusted? This question would show that the Supreme Court was dealing about adjustment of any amount paid during criminal proceeding, while preparing a decree in civil proceeding and in that background Supreme Court observed that the court should take into consideration the amount of compensation deposited in criminal case and should draw up a fresh decree after taking into consideration the amounts deposited. This is not the situation in the present case. No amount was deposited in the present case as compensation, nor it is a civil proceeding to modify the decree accordingly.

19. Section138 NI Act empowers the court to impose fine up to double of the cheque amount. While deciding any such amount of fine, the court also take scare of time spent in the trial as well as other factors. I find that ld. ACMM had imposed fine of Rs.1.6 crores in each case against cheque amount of Rs.1.5 crores, against convict no.2 and Rs.10 lac in each case against convict no.3. During arguments both parties were asked to furnish details of payments made to complainant in respect of liability in question. It is admitted situation that since 30.04.2012 till 19.06.2018 a total sum of Rs.19140350/-was paid to complainant on behalf of convicts. Ld. ACMM in the orders on sentence observed that —further payment made by the convict starting from this date before the hon'ble High Court towards the consent decree shall be adjusted towards the fine which this court has awarded today.ll As per this order, amount of Rs.14640350/- would not be adjusted towards the fine, though so much of amount has been paid to the complainant. This is not the meager amount to be ignored, while imposing fine and giving direction for payment of compensation to the complainant. One cannot loose sight of the fact that complainant did avail civil remedy before High Court of Delhi for recovery of amount against same liability. Complainant had the opportunity to seek all kind of compensation in the civil proceedings, but complainant limited his demand to Rs.10.4 crores in the consent agreement. These factors do have bearing over sentence being passed in proceedings under Section 138 NIAct.Therefore, I find that the approach adopted by ld. ACMM was incomplete, to take into account the payments already made to complainant regarding same liability. However, I shall give my final conclusion regarding sentence, after dealing with rival contentions made in criminal revisions.

20. The last ground/argument raised on behalf of convicts was that trial court could not award default sentence for none payment of fine. Ld. counsel referred to case law cited as Ahammed Kutty v. Abdullakoya, 2008 (4) RCR Criminal 763 SC. In this case, Supreme Court held that while exercising jurisdiction under Section 357(3) Cr.P.C, no direction can be issued for any default to pay the amount of compensation, that the accused shall suffer simple imprisonment. On the other hand, ld. counsel for the complainant referred to latest judgment from Supreme Court cited as Kumaran v. State of Kerala, 2017 (2) LRC 513 (SC), wherein Supreme Court while referring to Section 431 and Section 421 Cr.P.C in-conjunction with Section 64 and Section 70 IPC, held that sentence of imprisonment for non payment of fine must also be included as applying directly to compensation under Section 357(3) Cr.P.C

as well. Supreme Court also took note of judgment based in R.Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721, wherein Supreme Court dealing with a case for offence under Section 138 NI Act itself, held that —ifSection421ofthecourtputs compensation ordered to be paid by the court on a par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 IPC.‖ In view of such categorical law explained by Supreme Court in aforesaid two cases, it cannot be held that a default sentence of imprisonment could not be awarded by trial court, for non payment of fine including portion of compensation.

21. It is further more relevant to mention herein that fine imposed in the cases in hand cannot be termed as order being passed under Section 357(3) Cr.P.C. Section 357(3) Cr.P.C is applicable to those cases, wherein court imposes a sentence of which fine does not form a part and the court orders the accused to pay compensation amount to sufferer/victim. On the other hand, Section 357(1) Cr.P.C refers to a situation where court imposes a sentence of fine or a sentence of which fine forms a part, wherein the court may pass order to apply some part of that fine in the payment to any person as compensation. Thus,thesituationhereinreferstoSection357(1)Cr.P.C, rather than under Section 357(3) Cr.P.C, because the trial court had imposed a fine upon convict no.2as well as convict no.3 and had directed a part of fine imposed upon convict no. 2 to be paid to complainant as compensation.

22. In view of my foregoing discussions, findings and observations, I do not find any merit in the criminal appeals preferred by the convicts against impugned judgments of conviction. However, a decision has to be taken in respect of orders on sentence, which shall be taken at the end of this judgment, after dealing with plea raised in criminal revisions.

GROUNDS TAKEN IN SEVEN CRIMINAL REVISION PETITIONS :-

23. Being aggrieved of the impugned orders on sentence dated 23.04.2018 in aforesaid seven complaint cases, Sh. Sompal Ruhil being Authorized Representative of complainant company i.e. M/s. Murli Projects Pvt. Ltd., has preferred seven criminal revision petitions mainly on the following relevant grounds :-

> ● *That impugned orders on sentence dated 23.04.2018 passed by trial court is unjust,*

unfair, unreasonable and against the facts and law.

● That sentence awarded to convicts is neither adequate nor in consonance with the sprite of the provisions of Section 138 of NI Act.

● That trial court erred by awarding lighter punishment/sentence to convicts, who deserved to be awarded maximum punishment/ sentence as provided under Section 138 of NI Act. ● That trial court erred in not awarding any sentence of imprisonment to convict no.3, when it is established that she had signed the cheques in the capacity of managing director of convict company.

● That trial court did not mention any reason to show leniency in favour of convict no.2 by imposing insignificant sentence. ● That trial court did not disclose any reason to show leniency in favour of convict no.3, by imposing insignificant sentence by way of fine only.

● That trial court failed to consider that object behind introduction of Chapter XVII in the Negotiable Instruments Act 1881, by virtue of banking, public financial institutions and Negotiable Instruments law (Amendment) Act 1988, was with a view to encourage the culture of use of cheques and enhancing the credibility of the negotiable instruments.

● That trial court failed to pass a sentence to give proper effect to the object of legislation, which says that no drawer of cheque could be allowed to take dishonor of the cheque issued by him lightly.

● That sentence awarded to convicts could be termed to be a flea bite sentence as convict no.3 was let off with a meager sentence of fine only.

● That trial court committed an illegality, while awarding no sentence of imprisonment to convict no.3 on the ground that she was only a signatory, who signed the cheques on the asking of convict no.2 and she is a woman. Gender of accused cannot earn her any immunity from imposing substantive sentence. Convict no.3 had signed four agreements of loan dated 30.05.2010, 21.09.2011, 04.04.2012 and 09.08.2012 with complainant company and played active role in the commission of offence.

● That convict no.3 is the signatory of cheques and incharge of the affairs of business of convict no. 1 company with convict no. 2.Therefore, she is liable to be punished with the

sentence of imprisonment.

● That trial court exceeded its jurisdiction by passing the order that payment made by convicts from the date of sentence i.e. 23.04.2018, towards the consent decree, should be adjusted towards the fine awarded to him, as both are separate proceedings and complainant company is entitled to avail criminal as well as civil remedies.

APPRECIATION OF ARGUMENTS:-

24. Ld. counsel for petitioner/complainant company argued that trial court did not pass order of sufficient sentence against the convicts and was too lenient for them. He further submitted that the sentence awarded to convict no.2 was too short, though keeping in view the conduct of convicts maximum sentence should have been passed and even amount of compensation should have been double of the cheques amount. He further submitted that trial court was too lenient for convict no.3, being guided by her gender, though this factor was not relevant to award sentence of imprisonment against convict no.3. Ld. counsel referred to State of Himachal Pradesh v. Nirmala Devi, (2017) 7SCC262, to support his argument that gender of the convict no.3 could not be treated as an mitigating factor. He further referred to case laws cited as Suganthi Suresh Kumar v. Jagdeeshan,2002 (1) JCC 315 and L.N. Chaturvedi v. State & Ors., CRL. Rev.P.No.515/11 & Crl.M.A.No.2905/11, decided by High Court of Delhi on 11.04.2012, to submit that since convicts did not pay the cheque amount, therefore, severe punishment should have been awarded against convicts.

25. Per contra, ld. counsel for convicts challenged the maintainability of revision petitions itself, submitting that there is no provision to entitle the complainant to file revision petition against order on sentence. He further referred to judgment passed by High Court Delhi in the case of Bhajanpura Credit Society Ltd. v. Sushil Kumar, CRL.A.972/2012, decided by High Court of Delhi on 03.09.2014,to submit that complainant in a case under Section 138 NIAct is not even recognized as victim and hence, even Section 372 Cr.P.C cannot come to his aid. Ld. counsel further submitted that Section 377Cr.P.C empowers the State Government to prefer appeal against sentence and therefore, only State could have challenged the impugned orders of sentence under Section 377 Cr.P.C.

26. The aforesaid argument of convicts was countered by ld. counsel for petitioner/complainant with support of judgment passed by Karnataka High Court in the

case of Nagraj v. Gowramma, IV (2004) BC 44 and on the support of judgment passed by Madras High Court in the case of J.S. Agencies & Ors. v. M/s. Namakkal South India Transports, 1999 (1) Crimes 70, submitting that revision petitions were entertained in these cases against order of sentence.

27. I shall first of all deal with the legal issue of maintainability of the revision petitions. From the arguments made on behalf of convicts and on the basis of judgment passed by High Court of Delhi in the case of Bhajanpura Credit Society Ltd. (supra), it is very much clear that complainant could not have resorted to Section 372 Cr.P.C against orders on sentence, because Delhi High Court in aforesaid case has held that complainant in cases under Section 138 NI Act is not a victim as referred in Section 372 Cr.P.C.

28. Section 377 Cr.P.C is also not available to a complainant in order to appeal against sentence, as this provision is applicable for State. It is well apparent that Section 377 Cr.P.C could be invoked by the State only where State would have been a prosecuting agency. Though, Section 377 Cr.P.C. does not refer to nature of cases in which such appeal against sentence could be filed, however, in cases under Section 138 NIAct State is not the prosecuting agency and State has nothing to do with such cases. In that situation, State is not expected to be aggrieved of order on sentence.

29. On the other hand, Section 397 Cr.P.C provides that High Court or Sessions Judge may examine record of any proceeding before inferior criminal court to satisfy itself or himself as to correctness, legality and propriety of any finding, sentence or order etc. Thus, this provision specifically refers to sentence passed by an inferior criminal court, which can be looked into by a Sessions Judge under Section 397 Cr.P.C. In the back drop of such statutory provision, the observations made by Karnataka High Court in the case of Nagraj (supra) so as to validate a revision petition being filed before a Sessions Judge for inadequacy of sentence, assume importance. Similar was the finding given by Madras High Court in the case ofJ.S. Agencies (supra). Therefore, I find that all the revision petitions are well maintainable against impugned orders on sentence, on the grounds of inadequate sentence.

30. Now, I shall deal with the merit of contentions raised by complainant against sentence. The judgment passed by Supreme Court in the case of Nirmala Devi (supra), was pressed into to plead equality among convicts and to seek sentence of imprisonment against convict no.3, who is wife of convict no.2. Ld. ACMM (East) while passing orders on sentence, observed that

convict no.3 was only a signatory to cheques being wife of convict no.2 and she signed those cheques on asking of convict no.2. She was a woman and keeping in view her medical condition, no sentence of imprisonment was awarded against her.

31. The observations passed by Supreme Court in the case of Nirmala Devi (supra) were made, while dealing with a case of offence under Section 307/328/392 read with Section 34 IPC. The nature of those offences were apparently very serious. As far as Section 138 NI Act is concerned, Supreme Court in the case of Meter and Instruments Private Limited v. Kanchan Mehta, 2017 SCC OnLine SC 1197, observed that ―the object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged.‖ In the same case, Supreme Court went on to observe that offence under Section 138 of theAct is primarily a civil wrong. Thus, observations made by Supreme Court in case of Nirmala Devi (supra) cannot be applicable to the present cases, keeping in view the vast difference in the nature of offences in that case and in the present cases.

32. In the case of Praban Kumar Mitra v. State of West Bengal, AIR 1959 SC 144, a constitution bench of Supreme Court observed that ―In our opinion, in the absence of statutory provisions, in terms applying to an application in revision, as there are those in Section 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by Section 439 of the Code.

Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code.‖

33. In Rajaram Vs. State, 1983 CrLJ612 (MP),it was held that "Order of lower court ought not be lightly set aside unless it has entailed mis carriage of justice or where two views are possible merely because the revising court takes the other view.‖

34. In the present case, ld. ACMM was well aware of civil remedy availed by the complainant. The consent decree passed by High Court of Delhi was also well within knowledge of ld. ACMM. It is worth to mention here that before High Court of Delhi even complainant had agreed to receive a total sum of Rs.10.4 lac only, though he had the option to demand more amount on the grounds of due compensation. In view of these circumstances, the amount of fine imposed by ld. ACMM cannot be said to be inadequate fine. Rather, while dealing with criminal appeal of the convicts, I have already referred to this aspect to point out the compensation awarded to the complainant. It cannot be said that compensation awarded to the complainant is in sufficient, especially when complainant himself did not seek more compensation in the civil proceeding, which was more appropriate proceeding to seek such compensation. In fact, ld. ACMM should have taken note of all the payments made to complainant towards same liability, while imposing fine and giving direction for compensation to the complainant.

35. The sentence of imprisonment awarded to conviction is not to be enhanced merely to satisfy the sense of vengeance of the complainant. Ld. ACMM has not only passed sentence of imprisonment against convict no.2, but has also passed default sentence against convict no.2 as well as convict no.3 for non payment of fine. The convict no.3 was mother of a child during trial of the case and was pregnant. During pendency of the appeals before this court, she gave birth to another child. Therefore, omission of ld. ACMM to pass any sentence of imprisonment against her, is found to be in consonance with humane touch to the sentencing. Section 138 of the Act provides for punishment of imprisonment, or fine or both. Meaning thereby, ld. ACMM had the option to pass sentence of fine only against convict no.3 and thus, there is no legal infirmity in such order.

36. In my opinion under revisional jurisdiction this court is not supposed to substitute its own view, without there being any manifest error in the discretion exercised by ld. ACMM, with the view formed by ld. ACMM. Therefore, the demand of complainant to enhance the sentence is rejected.

37. However, there is one aspect attached to orders on sentence, which were not raised by ld. counsel for complainant. Ld. ACMM though convicted convict no.1 company as well, but no sentence was passed qua this company. Once, a person (natural or juristic) is convicted for an offence, the court has to pass some sentence qua that person. The impugned orders on

sentence are totally silent in respect of any sentence qua convict no.1 company. It appears that ld. ACMM as well as ld. counsel for complainant overlooked this aspect. Under revisional jurisdiction, it is duty of this court to point out legal infirmity so that same may be rectified. Therefore, I do find that impugned orders on sentence are liable to be set aside for aforesaid reasons.

38. In view of my foregoing discussions, findings and observations given in criminal appeals preferred by all the convicts, impugned judgments dated 13.04.2018 in all seven complaints are upheld. However, orders on sentence dated 23.04.2018 in all seven complaints are hereby set aside and matter is remanded back to the trial court to pass fresh order on sentence in each case, keeping in view the observations made herein above.

39. To be specific, the trial court shall pass order on sentence qua convict no.1 company as well. The trial court shall also take into account the payments made to complainant regarding same liability till date, while imposing fine against the convicts. Since, this court has rejected the prayer of complainant for enhancement of punishment of convicts no.2 and 3, therefore, trial court shall ensure that sentence against them is passed without any enhancement.

40. Accordingly, all seven criminal appeals as well as all seven criminal revisions are partially allowed in respect of impugned orders on sentence. Both parties shall appear before trial court on 31.01.2019 at 02:00 PM. Since convict no.2 is reported to be in civil prison, trial court shall seek his production accordingly.‖

21. However, at the same time, the learned Sessions Court was pleased to set aside the orders on sentence dated 23.04.2018 and remand the matter to the learned Trial Court for reconsideration of the question of sentence with the following directions:

> *—i. Not to enhance the period of sentence and the fine. ii. To award or pass an order for imposing sentence upon Accused No.1 the company.*

> *iii. The payments made to the complainant regarding the same liability till date to be taken into account, while imposing fine against the Petitioners.‖*

22. Pursuant thereto, the matter was reheard by the learned Trial Court, which passed a fresh order on sentence dated 22.05.2019. By the said order, accused no. 1 company was

admonished in all the complaint cases, noticing that adequate compensation had already been awarded to the complainant and that the company had been struck off from the register maintained by the Registrar of Companies. The learned Trial Court also reduced the sentence awarded to petitioner no. 1, Rajpal Naurang Yadav, and sentenced him in each case to undergo simple imprisonment for a period of three months and to pay a fine of ₹1.35 crores and, in default of payment of fine, to undergo simple imprisonment for a further period of six months. It was further directed that the sentences in all the seven cases would run concurrently. Insofar as petitioner no. 2, Radha Rajpal Yadav, is concerned, the learned Trial Court maintained the earlier order on sentence and directed her to pay a fine of ₹10 lakhs to the complainant in each complaint case and, in default of payment thereof, to undergo simple imprisonment for a period of three months. The sentences in all the seven cases were also directed to run concurrently.

23. Being dissatisfied with the fresh order on sentence dated 22.05.2019, both sides once again approached the learned Sessions Court. The petitioners/accused preferred seven criminal revision petitions, i.e. Cr. Rev Nos. 138/2019, 139/2019, 140/2019, 141/2019, 142/2019, 143/2019 and 144/2019, challenging the sentence awarded to them, while the complainant also instituted a separate set of seven criminal revision petitions, i.e. Crl. Rev No.180/2019, 181/2019, 182/2019, 183/2019, 184/2019, 185/2019, 186/2019, seeking enhancement of the sentence. Thus, for their respective reasons, both parties were aggrieved by the order on sentence dated 22.05.2019.

24. In the meantime, on 09.02.2022, the petitioners had instituted W.P. (CRL) No. 360/2022 before this Court, inter alia, seeking the following reliefs:

> *—a. Issue a Writ of mandamus or like nature by directing the Ld. A.S.J., Kakardooma Court to send the entire record of the Criminal Revision Petitions Nos. 138- 144/2009 filed by petitioners as well as Criminal Revision Petitions No. 180- 57 CRL.M.C.-4870-2024 186/20 19 filed by the Decree Holder/ Respondent No.2 and after examining the record set aside the same as a person cannot be sentenced twice for the same offence otherwise it would be violation of Fundamental Rights against Double Jeopardy of Article 20 (2) of the Constitution of India and declare the order of Learned M.M. dated 22.05.2019 and order of Learned A.S.J. dated 21.01.2019 as bad in Law being Violative of fundamental rights. b. Pass any such further orders to do complete justice as this Hon'ble Court may deem fit.॥*

25. Vide order dated 16.02.2022, this Court permitted the petitioners to withdraw the said writ petition with liberty to raise all their contentions before the learned Trial Court, including the contention that imposition of fine or payment under the proceedings under the NI Act would result in double jeopardy, inasmuch as the decree had already been executed. The relevant portion of the order dated 16.02.2022 reads as under:

> *—2. After some arguments, learned counsel for the petitioner seeks permission to withdraw the instant petition with liberty to raise all his contentions before the Trial Court including the contention that imposing a fine/non-payment of the amount in the proceedings under the Negotiable Instruments Act would result in double jeopardy for the petitioner inasmuch as the decree has already been executed.*
>
> *3. Liberty, as prayed for, is granted.*
>
> *4. Be it noted that this Court has not made any observations on the merits of the case. The Trial Court is requested to consider the arguments/contentions of the petitioner on its own merits before finally adjudicating the matter.*
>
> *5. With these observations, the petition is disposed of as withdrawn along with the pending application(s), if any.॥*

26. Thereafter, vide common judgment dated 29.05.2024, the learned Sessions Court partially allowed the seven revision petitions preferred by the petitioners as well as the seven revision petitions preferred by the complainant and modified the order on sentence dated 22.05.2019 passed by the learned Trial Court. The modified sentence awarded to the petitioners reads as under:

> *—i. Petitioner No.1- Rajpal Naurang Yadav sentenced to simple imprisonment for a period of 3 months in each case and to pay a fine of 1.35 Crore in each case and in default of payment of fine to suffer simple imprisonment for a further period of six months. (sentences in all seven cases shall run concurrently). Out of the fine of Rs. 1.35 Crores in each complaint case, a sum of Rs. 1,34,75,000/- shall be paid to the complainant and Rs. 25,000/- shall be paid to the State. ii. Petitioner No. 2 - Ms. Radha Rajpal Yadav is sentenced to pay a fine of Rs. 7,65,665/- to the complainant in each case and in default of payment of fine to suffer simple imprisonment for a period of three months. The amount*

> *of fine of Rs. 7,65,665/- in each case shall be paid to the complainant. (sentences in all seven cases shall run concurrently). 59 CRL.M.C.-4870-2024 iii. Accused No.1 therein - Company Shree Naurang Godavari Entertainment Pvt ltd. is not operational and has already been struck off from ROC. Adequate compensation had already been awarded to the complainant to be paid by Petitioner No. 2 and Petitioner No.3, therefore, Accused No. 1 company is admonished in all the cases.॥*

27. By a separate order of the same date, i.e. 29.05.2024, the learned Sessions Court directed petitioner no. 1 to surrender before the learned Trial Court within thirty days. Petitioner nos. 1 and 2 were also granted one month's time to deposit the fine amount. The said period expired on 28.06.2024. The operative portion of the order dated 29.05.2024 are extracted hereunder:

> *—Vide separate common judgments announced in the open Court today in fourteen revision petition, all fourteen criminal revisions are partially allowed and sentences have been altered against the convicts in CC Nos.823/13 (New No. 53711/16), 825/13 (New No.53694/16), 831/13 (New No.53822/16), 832/13 (New No.53827), 02/13 (New No.48785/16), 824/13 (New No.53693/16) & 03/2013 (New No.50553/16).*

> *Convict no.2 Rajpal Navrang Yadav has been sentenced to simple imprisonment for a period of 3 months in each case and to pay a fine of 1.35 Crore in each case and in default of payment of fine to suffer simple imprisonment for a further period of six months in each case. (sentences in all seven cases shall run concurrently). Out of the fine of Rs. 1.35 Crores in each complaint case, a sum of Rs. 1,34,75,000/- shall be paid to the complainant and Rs. 25,000/- shall be paid to the State.*

> *Convict no. 3 Ms. Radha Rajpal Yadav has been sentenced to pay fine of Rs. 7,65,665/- to the complainant in each case and in default of payment of fine to suffer simple imprisonment for a period of three months in each case. The amount of fine of Rs. 7,65,665/- in each case shall be paid to the complainant.*

> *Convict no. 1 Company Shree Navrang Godawari Entertainment Pvt ltd. is not operational and has already been struck off from ROC. Adequate compensation had already been awarded to the complainant to be paid by convict no.2 and convict no.3, therefore convict*

> *no.1 company is admonished in all the cases. A request has been made on behalf of convicts for suspension of sentence for a period of 30 days to enable them to avail their remedies against the judgment. Request is vehemently opposed by the Ld. Counsel for complainant stating that Section 389 Cr.P.C. is not applicable at the appellate stage.*

> *Convicts no. 2 and 3 are based in Mumbai and are appearing through VC. Convict no. 2 shall surrender before the Ld. Trial Court within 30 days from today. Convicts no. 2 and 3 are granted one month time to pay the fine amount. TCRs be sent back along with common judgment to the trial court forthwith. File be consigned to record room, as per rules. Copy of this order be given dasti.*

> *C. The Present Proceedings*

> *28. The petitioners have preferred the seven captioned revision petitions before this Court, i.e. CRL.REV.P. Nos. 797/24, 798/24, 799/24, 800/24, 801/24, 802/24 and 803/24, challenging the judgment dated 21.01.2019 of the learned Sessions Court, affirming the judgment of conviction dated 13.04.2018 passed by the learned Trial Court.*

> *29. The petitioners have also preferred the fourteen captioned petitions under Section 482 of the Cr.P.C., assailing the judgment dated 29.05.2024 passed by the learned Sessions Court, with respect to the order on sentence.*

SUBMISSIONS BEFORE THE COURT A. On Behalf of the Petitioners/Convicts

30. On the point of delay in filing the seven revision petition i.e. CRL.REV.P. Nos. 797/24, 798/24, 799/24, 800/24, 801/24, 802/24 and 803/24, challenging the judgment dated 21.01.2019 of the learned Sessions Court, affirming the judgment of conviction dated 13.04.2018 passed by the learned Trial Court, the learned counsel for the petitioners submits that the delay is neither deliberate nor intentional, but is attributable to incorrect legal advice tendered by the erstwhile counsel representing the petitioners.

31. It is contended that, although the prescribed period of limitation for filing the present revision petitions had expired on 21.04.2019, the learned Trial Court had, in the meantime, reheard the matter on the aspect of sentence pursuant to the judgment dated 21.01.2019 (remanding the matter to Trial Court on aspect of sentencing) and had passed a fresh order on sentence on 22.05.2019. According to the petitioners, they were advised by their then

counsel that the challenge to the fresh order on sentence before the learned Sessions Court would also encompass a challenge to the findings of conviction and that the entire matter, including the legality of the conviction, would be examined in those proceedings. Acting upon such legal advice, the petitioners bona fide preferred the said revision petitions and diligently pursued the remedy available to them before the learned Sessions Court. It is further submitted that the petitioners realised the error only upon the pronouncement of the common judgment dated 29.05.2024, wherein the learned Sessions Court specifically observed that it could not examine the correctness or legality of the earlier judgment dated 21.01.2019 insofar as the same had upheld the conviction of the petitioners. According to the learned counsel, it was only then that the petitioners became aware that the judgment dated 21.01.2019 affirming their conviction was required to be independently assailed before this Court.

32. The learned counsel submits that, having lost confidence in their earlier counsel, the petitioners thereafter sought fresh legal advice, whereupon they were advised that separate revision petitions against the judgment dated 21.01.2019 were required to be filed. It is further submitted that the petitioners thereafter took immediate steps to obtain the relevant records and certified copies of the proceedings, including the records of the criminal appeals, criminal revisions and complaint cases, which consumed considerable time. Thereafter, the present petitions were prepared and filed without any avoidable delay.

33. It is, therefore, argued that the petitioners had bona fide pursued a remedy before a forum which ultimately lacked jurisdiction to examine the issue of conviction and that the entire period spent in prosecuting the said proceedings deserves to be excluded. The learned counsel accordingly submits that the petitioners are entitled to the benefit of Section 14 of the Limitation Act, read with Section 5 thereof, and that the delay in filing the present revision petitions merits condonation in the interest of justice.

34. On merits, the learned counsel appearing for the petitioners argues that the complaints filed under Section 138 of the NI Act ceased to be maintainable once a fresh set of cheques was issued pursuant to the Consent Agreement dated 21.04.2013. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in Gimpex (P) Ltd. v. Manoj Goel: (2022) 11 SCC 705. It is submitted that the said decision lays down that a subsequent settlement agreement subsumes the original complaint arising out of the dishonour of the

earlier cheques and, therefore, the proceedings initiated on the basis of the original cheques can no longer be maintained. According to the learned counsel, once such a settlement is arrived at, a fresh cause of action arises only upon the dishonour of the cheques issued pursuant to the settlement and the complainant cannot simultaneously pursue proceedings based on both sets of cheques.

35. It is argued that the seven complaints in the present case arose from the dishonour of cheques issued pursuant to the agreements dated 30.05.2010, 21.09.2011, 04.04.2012 and 09.08.2012. However, thereafter, the parties entered into the Consent Agreement dated 21.04.2013, whereby the complainant, M/s Murli Projects Pvt. Ltd., and M/s Shree Naurang Godavari Entertainment Ltd., along with petitioner nos. 1 and 2 and M/s Shree Naurang Godavari Edutainment Pvt. Ltd., arrived at a full and final settlement. Under the said agreement, the petitioners agreed to jointly and severally pay a sum of ₹10.40 crores to the complainant, of which ₹40 lakhs had already been paid through RTGS and the balance amount of ₹10 crores was to be paid in installments. For securing the said settlement, four post-dated cheques aggregating to ₹10 crores were issued in favour of the complainant.

36. The learned counsel further submits that this Court, vide order dated 27.01.2016 passed in CS (OS) No. 3037/2012, passed a consent decree in terms of the Consent Agreement dated 21.04.2013. Particular emphasis is placed on the observations contained in the said order that the original agreement and the supplementary agreements would not revive and that the complainant would stand satisfied upon receiving the amounts stipulated in the Consent Agreement. It is, therefore, argued that the original cause of action stood extinguished and was substituted by a fresh cause of action arising out of the Consent Agreement.

37. It is further argued that it is an admitted position that the Consent Agreement dated 21.04.2013 was executed and that four post-dated cheques were issued pursuant thereto. In such circumstances, the principle laid down in Gimpex (P) Ltd. (supra) squarely applies and the original complaints could not have been continued. According to the learned counsel, in the event of breach of the Consent Agreement, the remedy available to the complainant was either to institute fresh complaints on the basis of the dishonour of the cheques issued under the settlement or to pursue appropriate civil remedies for its breach. Reliance is also placed upon the decision of this Court in Vinod Bansal v Intec Capital Ltd: 2024 SCC OnLine Del 3245, where, while applying the dictum of the Supreme Court in Gimpex (P) Ltd. (supra),

it was held that a subsequent settlement agreement subsumes the complaint based on the earlier dishonoured cheques and that a fresh cause of action arises only upon the dishonour of the cheques issued under the settlement. Reliance is further placed upon the decision in K Jeganathan v P. Sampath:

> *2024 SCC OnLine Del 4003, where the original complaint under Section 138 of the NI Act was quashed after issuance of a fresh set of cheques pursuant to a settlement agreement.*

38. The learned counsel further submits that both the learned Trial Court and the learned Sessions Court erred in rejecting the petitioners' contention that, upon execution of the Consent Agreement dated 21.04.2013, the Third Supplementary Agreement dated 09.08.2012 ceased to have any effect and the cheques in question no longer represented an enforceable liability. It is argued that the learned Sessions Court also erred in its interpretation of Clause 6 of the Consent Agreement. It is also contended that paragraph 7 of the order dated 27.01.2016 passed by this Court in CS (OS) No. 3037/2012 merely preserves the remedies available to the complainant in respect of violation of undertakings given to this Court or non-compliance with its orders and directions, including proceedings for contempt, and does not preserve the right to continue with the original complaints under Section 138 of the NI Act. In this regard, reliance is placed upon paragraph 5 of the said order, wherein this Court specifically recorded the statement of learned counsel for the complainant that the original agreement and the supplementary agreements would not revive and that the complainant would be satisfied upon receiving the amounts stipulated in the Consent Agreement dated 21.04.2013.

39. It is further argued that the complainant cannot be permitted to derive monetary benefits simultaneously through both civil and criminal proceedings arising from the same cause of action. Having obtained a consent decree on the basis of the settlement agreement, without having to prove its claim in the civil suit, the complainant cannot, according to the petitioners, continue to prosecute the original complaints arising out of the Third Supplementary Agreement dated 09.08.2012. It is submitted that permitting recovery under both proceedings would be inherently unjust and would amount to an abuse of the process of law.

40. It is, therefore, prayed that the judgments of conviction dated 13.04.2018, as affirmed by the impugned judgment dated 21.01.2019, be set aside.

41. On the aspect of sentence, the learned counsel for the petitioners argues that by virtue of the consent decree dated 27.01.2016, the complainant had already secured a decree for ₹10.40 crores, which represented the full and final settlement between the parties. It is submitted that, thereafter, vide the impugned order dated 29.05.2024, petitioner no. 1 has been directed to pay a fine of ₹1.35 crores in each of the seven complaint cases, aggregating to ₹9,45,00,000/-, out of which a sum of ₹9,43,25,000/- is payable to the complainant. It is further submitted that petitioner no. 2, Radha Rajpal Yadav, has been directed to pay a fine of ₹7,65,665/- in each of the seven cases, aggregating to ₹53,59,655/-. According to the learned counsel, the total compensation awarded through the criminal proceedings thus comes to ₹9,96,84,655/-. It is argued that this overlapping of the decreed amount and the compensation awarded by way of fine is inherently unjust and amounts to an abuse of the process of law.

42. It is further argued that the learned Sessions Court failed to consider that, on an alleged loan of ₹5 crores, the complainant now stands to recover an amount close to ₹20 crores by combining the amounts recoverable under the consent decree and the compensation arising out of the fines imposed in the criminal proceedings. This effectively results in a return of nearly 300% on the initial amount of ₹5 crores, which is wholly disproportionate, unjust and impermissible in law. It is submitted that, while determining the quantum of fine under the NI Act, the learned Sessions Court ought to have taken into account the amount already decreed in the civil proceedings. It is also argued that the learned Sessions Court ought to have directed that any amount deposited by the petitioners in future be adjusted towards the fine and compensation awarded in the criminal proceedings and, correspondingly, be set off against the amount recoverable under the consent decree.

43. The learned counsel further submits that petitioner no. 1 has already undergone three months' imprisonment in civil prison in execution proceedings arising out of the same transaction and concerning the same liability. It is argued that the learned Sessions Court failed to appreciate that the said imprisonment was directly connected with the same transaction and cause of action which forms the basis of the present criminal proceedings. Therefore, petitioner no. 1 ought not to be subjected to another sentence of imprisonment

arising out of the same transaction.

44. Without prejudice to the aforesaid submissions, it is stated that even if this Court were to uphold the conviction, no sentence of imprisonment ought to be awarded to petitioner no. 1 in the facts and circumstances of the case. In the alternative, it is prayed that petitioner no. 1 be extended the benefit of Sections 3 or 4 of the Probation of Offenders Act, 1958.

45. On these grounds, it is prayed that the impugned judgment dated 29.05.2024, sentencing the petitioners in the present cases, be also set aside.

B. On Behalf of the Complainant/Respondent No. 1

46. On the point of delay, the learned counsel appearing for respondent no. 1/complainant opposes the applications for condonation of delay and submits that the present revision petitions are hopelessly barred by limitation, there being a delay of about 1894 days in challenging the judgment dated 21.01.2019. It is contended that no sufficient cause has been shown for condonation of such an inordinate delay.

47. It is argued that the petitioners cannot attribute the delay solely to incorrect legal advice. It is stated that the petitioners were represented by different counsels at various stages and they had actively pursued the proceedings over several years. Therefore, it cannot be said that they were misled by a single counsel or remained unaware of the appropriate remedy. The learned counsel further submits that the petitioners had preferred criminal revision petitions before the learned Sessions Court in July, 2019 and had also instituted W.P. (CRL.) No. 360/2022 before this Court, specifically assailing the order dated 21.01.2019. This clearly demonstrates that the petitioners were fully aware of the impugned judgment and its consequences. Despite this, they failed to challenge the judgment of conviction before this Court within the prescribed period of limitation. It is, therefore, contended that the petitioners have been grossly negligent and are not entitled to the benefit of Sections 5 or 14 of the Limitation Act. The present revision petitions, being grossly delayed, are liable to be dismissed at the threshold on the ground of limitation alone.

48. On the maintainability of the petitions under Section 482 of the Cr.P.C., the learned counsel appearing for respondent no. 1 submits that the present petitions are not maintainable in view of the bar contained in Section 397(3) of Cr.P.C. It is argued that the petitions under Section 482 of Cr.P.C. are, in substance, nothing but second revision petitions

disguised as petitions invoking the inherent jurisdiction of this Court. According to the learned counsel, the inherent powers under Section 482 of Cr.P.C. cannot be exercised to circumvent the statutory bar on a second revision or to nullify the sentence imposed after the conviction has attained finality. It is further argued that the petitioners are, in effect, seeking to be absolved of the consequences of their conviction under Section 138 of the NI Act, even though they do not dispute the conviction itself. It is stated that the challenge in these petitions under Section 482 of Cr.P.C. is essentially confined to the sentence awarded to the petitioners, since their conviction had attained finality upon dismissal of their appeals by the learned Sessions Court on 21.01.2019 and no challenge thereto was made within the prescribed period. It is also submitted that the petitioners had expressly accepted their conviction in the revision petitions filed before the learned Sessions Court.

49. On merits, the learned counsel for respondent no. 1 opposes the prayer for setting aside the judgments passed by the learned Courts below. It is submitted that the petitioners have repeatedly failed to honour the undertakings given by them to this Court as well as the various agreements and settlements voluntarily entered into by them over the years. It is pointed out that this Court had also passed a consent decree for ₹10.40 crores on 27.01.2016, but petitioner no. 1 failed to abide by the undertakings and commitments made thereunder and was consequently directed to undergo detention in civil prison for a period of three months in Execution Petition No. 69/2016. It is further submitted that for more than a decade, the petitioners have consistently expressed their inability to discharge the amounts due to respondent no. 1.

50. The learned counsel has also drawn the attention of this Court to the order dated 26.09.2024 passed in the present proceedings, wherein this Court had observed as under:

> *—8. Although, this Court on a careful reading of the impugned common judgment, finds no grounds to interfere on the merits of this petition, however, considering the plea advanced by the learned Senior Counsel for the petitioners, and for the fact that the petitioners are not hardened criminals, the sentence awarded by the impugned common judgment/order dated 29.05.2024 is hereby suspended till the next date of hearing, subject to the petitioners submitting personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount, subject to the satisfaction of the learned MM/duty MM.Further, subject to the petitioners adopting sincere and genuine measures to explore the*

> *possibility of reaching an amicable settlement with respondent No. 1...॥*

51. It is further submitted that the petitioners had also preferred twenty-one Special Leave Petitions before the Hon'ble Supreme Court challenging the order dated 28.06.2024 passed by this Court in all the fourteen criminal miscellaneous petitions and seven criminal revision petitions. However, the Hon'ble Supreme Court declined to interfere with the matter on merits. The relevant observations of the Hon'ble Supreme Court read as under:

> *—2. After hearing learned counsel for the petitioners, we are not inclined to entertain the present special leave petitions. However, it is suffice to observe that the mediator while mediating the issues shall not be influenced by the observations made in paragraph 8 of the order impugned.*

> *3. Accordingly, the Special Leave Petitions are dismissed॥*

52. The learned counsel further submits that the petitioners thereafter filed an application seeking modification of the order dated 25.04.2025 before the Hon'ble Supreme Court, being Diary No. 10044/2026, which also came to be dismissed. It is stated that repeated challenges mounted by the petitioners at different stages have been unsuccessful and the present petitions deserve to be dismissed.

53. The learned counsel for respondent no. 1 further argues that the contention of the petitioners that the criminal complaints arising out of the dishonour of the cheques issued pursuant to the Third Supplementary Agreement dated 09.08.2012 could not have been continued after the execution of the Consent Terms dated 21.04.2013 and the passing of the consent decree dated 27.01.2016, is wholly misconceived. It is submitted that the Consent Terms did not supersede or extinguish the Third Supplementary Agreement and were merely supplemental in nature. It is further argued that the complaint cases arising out of the dishonour of the cheques issued under the Third Supplementary Agreement were never stayed and the only protection granted to the petitioners was that no coercive steps would be taken against them. The learned counsel has also drawn the attention of this Court to Clause 6 of the Consent Terms, which specifically provided that the seven complaint cases would be withdrawn only upon receipt of the entire payment of ₹10 crores. Since admittedly the petitioners failed to pay the said amount, there was never any occasion for withdrawal of

the complaints. The learned counsel further submits that the four cheques issued under the Consent Terms were merely intended to secure the promises made by the petitioners under the settlement and were not meant to substitute the earlier cheques or extinguish the existing complaints.

54. It is also argued that the decision of the Hon'ble Supreme Court in Gimpex (P) Ltd. (supra) is inapplicable to the facts of the present case. It is contended that no fresh prosecution under Section 138 of the NI Act was initiated on the basis of the cheques issued pursuant to the Consent Terms and, therefore, the apprehension of two parallel prosecutions, which weighed with the Supreme Court in Gimpex (P) Ltd. (supra), does not arise in the present case. The learned counsel further distinguishes the said decision on the ground that, in that case, the terms of compromise expressly contemplated that a fresh complaint under Section 138 of the NI Act would lie in the event of dishonour of the settlement cheques. It is also submitted that paragraph 41 of the said decision itself clarifies that complaints based on the original cheques need not necessarily be quashed in every case where a compromise has been entered into between the parties. As regards the reliance placed by the petitioners on the decision of this Court in Vinod Bansal (supra), the learned counsel submits that the said decision is itself under challenge before the Hon'ble Supreme Court in SLP (Crl.) No. 10980/2024.

55. It is further argued that the Consent Terms expressly envisaged continuation of the original complaints in the event of default. According to the respondent no. 1, Clause 6 specifically permitted respondent no. 1 to proceed with the existing complaint cases if the petitioners failed to adhere to the settlement terms. Thus, respondent no. 1 could not have instituted fresh prosecutions on the basis of the four cheques issued under the Consent Terms since the agreement itself contemplated continuation of the earlier complaints. The learned counsel also submits that the petitioners are misreading paragraph 5 of the consent decree dated 27.01.2016. According to him, the said paragraph was incorporated only to clarify the position in the event the petitioners paid the entire sum of ₹10 crores under the settlement. It is argued that only in such eventuality would the original agreements and supplementary agreements not survive. The eventuality of non-payment was specifically dealt with in Clause 6, which reserved the right of respondent no. 1 to continue with the criminal complaints. It is also pointed out that this very issue has been considered by both the learned Trial Court and the learned Sessions Court and concurrent findings have been

returned against the petitioners.

56. As regards the plea of double jeopardy, the learned counsel submits that the argument of the petitioners that the decree stood executed by virtue of the order dated 30.11.2018 and that they are, therefore, entitled to be discharged from the present proceedings, is wholly misconceived. It is argued that the order dated 30.11.2018 merely directed detention in civil prison and cannot be construed to mean that the decree stood fully satisfied or executed. The learned counsel further submits that the said argument is contrary to Section 58(2) of the Code of Civil Procedure, which specifically provides that a judgment-debtor shall not be discharged from his debt merely because he has been detained in civil prison. It is also argued that the contention that petitioner no. 1 should be absolved of criminal liability under Section 138 of the NI Act because of the period spent in civil prison is equally misconceived. It is stated that petitioner no. 1 has not undergone any sentence pursuant to his conviction under the NI Act. The period of three months spent in civil prison was solely on account of non-payment of the decretal amount and cannot be equated with the sentence awarded in the criminal proceedings.

57. It is, therefore, submitted that there is no ground to interfere with the order on sentence, as modified by the learned Sessions Court vide judgment dated 29.05.2024, and that all the present petitions deserve to be dismissed.

ANALYSIS & FINDINGS

58. Before adverting to the rival contentions and the issues arising for consideration, it would be apposite to briefly recapitulate the nature of the proceedings giving rise to the present batch of petitions.

59. The genesis of the present litigation lies in seven complaint cases instituted by respondent no. 1 in the year 2013 under Section 138 of the NI Act. The said complaints culminated in a common judgment dated 13.04.2018 passed by the learned Trial Court whereby the petitioners were convicted, followed by separate orders on sentence dated 23.04.2018.

60. Aggrieved thereby, the petitioners preferred seven criminal appeals before the learned Sessions Court challenging both the judgments of conviction as well as the orders on sentence. Simultaneously, respondent no. 1 also preferred seven criminal revision petitions

assailing the adequacy of the sentence awarded by the learned Trial Court.

61. The aforesaid seven criminal appeals and seven criminal revision petitions were decided by the learned Sessions Court vide common judgment dated 21.01.2019. While the judgments of conviction dated 13.04.2018 were affirmed, the orders on sentence dated 23.04.2018 were set aside and the matter was remanded to the learned Trial Court for passing fresh orders on sentence.

62. Pursuant to the remand, the learned Trial Court passed fresh orders on sentence on 22.05.2019. Once again, both sides approached the learned Sessions Court. The petitioners preferred seven criminal revision petitions challenging the sentence awarded to them, while respondent no. 1 also filed seven criminal revision petitions seeking enhancement thereof. These fourteen revision petitions came to be decided by the learned Sessions Court vide common judgment dated 29.05.2024.

63. Thus, the present batch of petitions before this Court arises from two distinct judgments passed by the learned Sessions Court. The seven criminal revision petitions filed by the petitioners before this Court challenge the judgment dated 21.01.2019 insofar as it affirms the conviction of the petitioners, whereas the fourteen petitions under Section 482 of the Cr.P.C. assail the subsequent judgment dated 29.05.2024 relating to the fresh orders on sentence passed by the learned Trial Court pursuant to the remand. It is in this backdrop that the issues arising in the present proceedings are required to be examined.

A. Criminal Revision Petitions challenging the Judgment of Conviction dated 13.04.2018 and 21.01.2019

64. The particulars of the seven criminal revision petitions, along with the corresponding applications seeking condonation of delay, are tabulated below:

65. At the outset, it is necessary for the Court to first adjudicate the applications seeking condonation of delay in filing the present revision petitions, since the question of limitation goes to the very maintainability of the revision petitions

66. The delay in filing the present revision petitions is of 1894 days, i.e. more than five years. The petitioners, therefore, carry a significant burden of establishing ‗sufficient cause' which prevented them from approaching this Court within the prescribed period of limitation.

67. Essentially, the explanation offered by the petitioners is that though they had challenged the fresh order on sentence dated 22.05.2019, passed by learned Trial Court, before the learned Sessions Court by way of revision petitions in the year 2019 itself, they were under a bona fide impression that they had also challenged the findings of conviction recorded against them. According to them, it was only upon the pronouncement of the judgment dated 29.05.2024 in those revision petitions that they realised that their conviction had not been assailed in those revision petitions.

(i) Revision Petitions filed before Sessions Court

68. To appreciate the contentions raised on behalf of the petitioners and the respondent no. 1, this Court has examined the case records. A perusal of the revision petitions preferred by the petitioners in the year 2019 before the Sessions Court (i.e., Crl. Rev. Nos. 138/2019, 139/2019, 140/2019, 141/2019, 142/2019, 143/2019 and 144/2019) leaves little room for doubt regarding the nature and scope of those proceedings. In this regard, the following aspects are noteworthy:

> *(i) The very title of each of these revision petitions described them as a '_Criminal Revision under Section 397 Cr.P.C. against the Impugned Order on Sentence dated 22.05.2019'. The challenge, therefore, was expressly confined to the order on sentence and not to the initial judgment of conviction dated 13.04.2018 or the appellate judgment dated 21.01.2019. This evident from the following:*

> *(ii) The grounds raised in those revision petitions were also entirely directed against the sentence awarded to the petitioners herein. The petitioners had questioned, inter alia, the enhancement of the default sentence from three months to six months, the failure of the learned Trial Court to take into account the period spent by petitioner no. 1 herein in civil prison in the execution proceedings, and the failure to adjust certain amounts allegedly paid by the petitioners. Significantly, no ground whatsoever was raised challenging the findings of guilt recorded by the learned Trial Court or affirmed by the learned Sessions Court.*

> *(iii) Most importantly, the prayer clauses of those revision petitions themselves belie the explanation now sought to be advanced before this Court. The petitioners had specifically prayed that the impugned order dated 22.05.2019 be set aside '_to the effect of awarding*

> *sentence' and that petitioner no. 1 herein be treated as a „convict" who had already undergone the requisite sentence. The relevant portion of the petition reads as under:*

69. The use of the expression ‗be treated as a convict' in the prayer clause is relevant, as the prayer proceeds on the premise that the petitioner is not challenging his conviction, but only the quantum of sentence requires reconsideration, and he prays that while maintaining his conviction, he be sentenced to the period already undergone by him in the execution proceedings in the civil suit which was filed before this Court. The language used in the prayer clause of the aforesaid petitions is, therefore, completely contrary to the plea that the petitioners were under an impression that their conviction also stood challenged.

70. This Court also cannot ignore that the aforesaid revision petitions filed in the year 2019 were duly signed and verified by the petitioners themselves. The accompanying affidavits which are required to be filed alongwith any petition also contain specific averments that the contents of the petitions had been read and understood by the petitioners and that the petitions had been drafted under their instructions. Thus, in this Court's opinion, the petitioners herein cannot simply contend that they were entirely unaware of the nature of the proceedings instituted by them or of the ground and prayer mentioned in those petitions.

71. Prima facie, the material available on record indicates that the petitioners had consciously chosen to challenge only the order on sentence and not the judgment affirming their conviction.

72. Pertinently, the conduct of the petitioners - subsequent to the year 2019 - also does not support their plea that they remained under a bona fide misconception regarding the challenge to their conviction.

(ii) Writ Petition No. 360/2022 filed before this Court

73. It is material to note that in the year 2022, the petitioners had instituted a writ petition, i.e. W.P.(CRL.) 360/2022 before this Court, titled Mr. Rajpal Navrang Yadav & Anr. v. State of NCT of Delhi & Anr.. A perusal of the prayer clause in the said petition reveals that the grievance of the petitioners was confined to the issue of sentence awarded to them and the plea of double jeopardy. The petitioners had specifically pleaded that they could not have

been sentenced twice for the same offence and had sought to challenge the fresh order on sentence dated 22.05.2019 and the judgment of Sessions Court dated 21.01.2019 only on the ground that the sentence awarded to them, despite the execution proceedings taken place before the High Court, amounted to double jeopardy. The prayer clause of the said writ petition is set out below:

> *—a. Issue a Writ of mandamus or like nature by directing the Ld. A.S.J., Kakardooma Court to send the entire record of the Criminal Revision Petitions Nos. 138- 144/2009 filed by petitioners as well as Criminal Revision Petitions No. 180- 186/20 19 filed by the Decree Holder/ Respondent No.2 and after examining the record set aside the same as a person cannot be sentenced twice for the same offence otherwise it would be violation of Fundamental Rights against Double Jeopardy of Article 20 (2) of the Constitution of India and declare the order of Learned M.M. dated 22.05.2019 and order of Learned A.S.J. dated 21.01.2019 as bad in Law being Violative of fundamental rights.*
>
> *b. Pass any such further orders to do complete justice as this Hon'ble Court may deem fit.॥*
>
> *74. The aforesaid writ petition, vide order dated 16.02.2022, was permitted to be withdrawn, with liberty to raise all contentions before the learned Trial Court, including the contention that imposition of fine or non-payment of the amount under the proceedings under the NI Act would result in double jeopardy. The observations made by this Court, by way of following order, also demonstrate that the controversy raised before it pertained only to the issue of sentence and the consequences flowing therefrom, and not to the correctness of the conviction itself:*
>
> *—2. After some arguments, learned counsel for the petitioner seeks permission to withdraw the instant petition with liberty to raise all his contentions before the Trial Court including the contention that imposing a fine/non-payment of the amount in the proceedings under the Negotiable Instruments Act would result in double jeopardy for the petitioner inasmuch as the decree has already been executed.॥*
>
> *75. It is also material to note that the above writ petition was filed in the year 2022, by which time, more than three years had elapsed from the date of the impugned judgment dated 21.01.2019. Yet, the petitioners still did not institute any revision petitions before*

> *this Court challenging the judgment affirming their conviction, though they were actively litigating and pursuing remedies arising out of the same set of proceedings.*

> *76. It is also noteworthy that the petitioners have, over the years, engaged multiple counsels in these proceedings. The record, in fact, also reveals that the learned counsels who had appeared on behalf of the petitioners in W.P. (CRL.) 360/2022 (noted above) and the learned counsels who appeared in the present petitions before this Court on the last few dates of hearing are the same. However, initially before this Court, several other learned counsels and senior counsels had appeared on behalf of petitioners. Therefore, this is not a case where the petitioners herein remained represented by a single counsel throughout these years, who kept on misguiding the petitioners.*

> *77. In fact, the petitioners were actively pursuing their cases before different courts, engaging different counsel from time to time, and were fully aware of the pendency and status of their cases.*

Despite this, for more than five years, they never chose to assail the judgment dated 21.01.2019 insofar as it affirmed their conviction for offence under Section 138 of the NI Act.

78. In these circumstances, the explanation now offered - that the petitioners were under a misconception that the judgment of conviction had already been challenged and that they were misled by their earlier counsel who had filed the revision petitions in the year 2019 - does not inspire the confidence of this Court.

(iii) Whether 'sufficient cause' has been demonstrated by the petitioner?

79. While observing so, this Court is conscious of the settled principle of law, that the expression ‗sufficient cause' under Section 5 of the Limitation Act, 1963, should receive a liberal and justice- oriented interpretation by a court of law, and that a litigant should not ordinarily be non-suited on technical grounds alone. However, the law is equally well-settled that mere filing of an application for condonation of delay does not entitle a party to such relief as a matter of course. The explanation offered must be bona fide, reasonable and should satisfactorily explain the entire period of delay in filing a petition. A mere excuse cannot be elevated to the status of a sufficient cause.

80. Also, this Court cannot lose sight of the fact that the petitioners seek to attribute the

entire delay to incorrect legal advice tendered by their earlier counsel. In this regard, this Court is constrained to note that petitioner no. 1 herein is an accomplished actor, who is possessed of sufficient means and resources, and has throughout been represented by experienced and eminent members of the Bar. This is not a case of an uninformed or otherwise disadvantaged litigant who would be unable to understand the nature of the proceedings being pursued on his behalf. In such circumstances, the plea that the petitioners remained under a misconception for more than five years, and believed that they had challenged their conviction as well, despite them actively pursuing legal proceedings before different courts and engaging several counsels during this period, cannot be accepted, and a litigant cannot, after remaining silent for years, be permitted to simply shift the entire blame on his counsel and seek condonation of an inordinate delay in availing a legal remedy.

81. In this regard, this Court takes note of the decision of the Hon'ble Supreme Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy: (2013) 12 SCC 649, wherein the Court laid down the broad principles governing condonation of delay and emphasised, inter alia, that lack of bona fides, gross negligence and fanciful explanations are relevant considerations while deciding such applications. The relevant observations read as under:

> *—21. From the aforesaid authorities the principles that can broadly be culled out are:*
>
> *21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
>
> *21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
>
> *21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
>
> *21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a*

significant and relevant fact. 21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice. 21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation. 21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation. 21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: 22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. 22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

> *22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
>
> *22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.॥ (emphasis added)*

82. Similarly, in Union of India v. Jahangir Byramji Jeejeebhoy (D) Through His LRs.: 2024 SCC OnLine SC 489, the Hon'ble Supreme Court reiterated that the length of the delay is itself a relevant factor and that where a party has lost its right by reason of its own inaction for a long period of time, the delay cannot ordinarily be presumed to be non-deliberate. The Supreme Court further held that before considering the merits of the main matter, the Court must first examine the bona fides of the explanation offered for the delay. The relevant observations are extracted below:

> *—26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.॥*

83. Likewise, in State of Odisha v. Managing Committee of Namatara Girls High School: 2026 SCC OnLine SC 191, while refusing to condone delay of 123 days in filing the Special Leave Petition and a further delay of 96 days in re-filing the same, the Hon'ble Supreme Court

reiterated that condonation of delay is not a matter of right and it rests entirely within the discretion of the Court. The Supreme Court also drew a distinction between a genuine explanation and a mere excuse put forward to justify the delay.

84. This Court also takes note of the observations of the Hon'ble Supreme Court in Salil Dutta v. T.M. and M.C. Private Ltd.: (1993) 2 SCC 185, wherein it was held that a litigant cannot completely absolve itself of responsibility and attribute the entire blame to its advocate while claiming to be unaware of the nature and significance of the proceedings. The relevant observations read as under:

> *—8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. Maybe not. But one thing is clear -- they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted...ll (emphasis added)*

> *85. In Rajneesh Kumar v. Ved Prakash: 2024 SCC OnLine SC 3380, the Hon'ble Supreme Court cautioned against the increasing tendency of litigants to attribute the entire blame to their advocates and held that even if an advocate has been negligent, such negligence by itself cannot furnish a ground to condone a long and inordinate delay, as a litigant is equally expected to remain vigilant regarding proceedings initiated at his own instance. The relevant observations are as follows:*

> *—10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief...॥ (emphasis added)*

> *86. The principles flowing from these judicial precedents make it abundantly clear that while courts should adopt a justice-oriented approach, the concepts of liberal interpretation and substantial justice cannot be stretched to condone every inordinate delay on the basis of explanations that are devoid of bona fides or are contrary to the record or a in the nature of mere excuses.*

(iv) The Conduct of Petitioner no. 1 before this Court

87. This Court also cannot overlook the manner in which the present proceedings have progressed before it.

88. The delay in filing the revision petitions was never condoned by the Predecessor Benches of this Court. In fact, on the very first date of hearing, the Predecessor Bench was not even inclined to entertain these petitions on merits, as clearly noted in the order dated 28.06.2024. It was only on the statement made by the learned Senior Counsel appearing for the petitioners, that the petitioners were willing to explore the possibility of an amicable settlement with the complainant, that indulgence was shown and the parties were referred

to mediation. This is evident from the following paragraphs of order dated 28.06.2024:

> *—8. Although, this Court on a careful reading of the impugned common judgment, finds no grounds to interfere on the merits of this petition, however, considering the plea advanced by the learned Senior Counsel for the petitioners, and for the fact that the petitioners are not hardened criminals, the sentence awarded by the impugned common judgment/order dated*

29.05.2024 is hereby suspended till the next date of hearing, subject to the petitioners submitting personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount, subject to the satisfaction of the learned MM/duty MM.Further, subject to the petitioners adopting sincere and genuine measures to explore the possibility of reaching an amicable settlement with respondent No. 1.

xxx

10. In the interregnum, the matter be listed before the Judge InCharge of Delhi High Court Mediation Centre (DHM&CC), for exploring the possibility of an amicable settlement between the parties on 08.07.2024 at 02:30 PM after issuing notice to respondent No.l and his counsel. Steps shall be taken to serve notice upon respondent No. 1 for the said date before the DHM&CC at the cost and expense of the petitioners.‖

89. In the meantime, the petitioners herein had also challenged the order dated 28.06.2024 before the Hon'ble Supreme Court by way of Special Leave Petitions, which were dismissed vide order dated 25.04.2025. However, it was clarified that the mediator concerned would remain uninfluenced by the observations made in paragraph 8 of order dated 28.06.2024. The order of the Supreme Court is extracted hereunder:

> *—2. After hearing learned counsel for the petitioners, we are not inclined to entertain the present special leave petitions. However, it is suffice to observe that the mediator while mediating the issues shall not be influenced by the observations made in paragraph 8 of the order impugned.*

> *3. Accordingly, the Special Leave Petitions are dismissed.‖*

> *90. Furthermore, a perusal of the orders passed by this Court, in the present batch of*

> *petitions, would reveal that these cases were kept pending, only to afford the petitioners an opportunity to settle the dispute with the complainant. On the first date of hearing itself, i.e. 28.06.2024, the matter was referred to the Delhi High Court Mediation and Conciliation Centre. A year later, this Court vide order dated 31.07.2025, had observed that sentence awarded to the petitioner no. 1 was suspended by the Court only on his undertaking that he would settle the matter, yet no payment had been made.*

> *91. On 22.08.2025, this Court was informed by the learned senior counsel for the petitioners that two Demand Drafts of ₹50 lakhs and ₹25 lakhs respectively would be deposited with the Registrar General of this Court, and that an amount of ₹9 crores still remained payable to the respondents. However, the said DDs were deposited only pursuant to the order dated 17.10.2025.*

> *92. On 17.10.2025, the petitioners had assured this Court that they would make a payment of ₹2.5 crores to the respondent no. 1 in about one month. However, this undertaking was never complied with and one excuse or the other was given on every date of hearing, and eventually, since no such payment was made, this Court, vide order dated 02.02.2026, was constrained to recall the order suspending the sentence and direct the petitioner no. 1 to surrender before the jail authorities.*

> *93. Thereafter, the family members of petitioner no. 1, on his instructions, had paid an amount of ₹1.5 crores to the complainant/respondent no. 1, pursuant to which, his sentence was again suspended by this Court vide order dated 16.02.2026.*

> *94. However, after already having made a payment of about ₹2.25 crores towards settlement to the complainant/respondent no. 1, the petitioner no. 1, changed his counsels, and appeared before this Court and refused to make any further payments.*

> *95. The course adopted by the petitioner in the present proceedings indicates that, despite the extraordinary delay of more than five years in filing these revision petitions, he was granted repeated indulgence by this Court and afforded every opportunity to resolve the dispute.*

However, in the end, the petitioner did not stand by the undertakings given by him and on his behalf through several learned Senior Counsels appearing before this Court, and instead

took the stand that his previous counsels had not properly guided him in the proceedings before this Court. In the considered view of this Court, this explanation of being misguided by a counsel cannot be repeatedly invoked every time a litigant wishes to resile from an earlier stand or avoid the consequences of his own conduct.

(v) Conclusion

96. Be that as it may, having considered the entire factual matrix, the explanation furnished by the petitioners, the material on record, the conduct of petitioner no. 1 throughout the proceedings, and the settled principles governing condonation of delay, this Court is of the considered opinion that the petitioners have failed to make out any sufficient cause for condoning the extraordinary delay of 1,894 days in filing the present revision petitions, challenging the judgment of conviction dated 21.01.2019. The explanation that they remained under a misconception for more than five years that their conviction had already been challenged is neither borne out from the record nor inspires confidence of this Court, and equally unpersuasive is the attempt to attribute the entire delay to the alleged incorrect legal advice of their previous counsel.

97. In the facts of the present case, this Court finds that the explanation offered is devoid of bona fides and falls short of the standard required for condoning such an inordinate delay. This Court, therefore, finds no ground to exercise its discretionary jurisdiction in favour of the petitioners.

98. For the reasons recorded hereinabove, the applications seeking condonation of delay, i.e. CRL.M.A. Nos. 18596/24, 18628/24, 18635/24, 18639/24, 18643/24, 18647/24 and 18651/24, are dismissed.

99. As a sequitur thereto, the revision petitions, i.e. CRL.REV.P. Nos. 797/2024, 798/2024, 799/2024, 800/2024, 801/2024, 802/2024 and 803/2024 are also dismissed.

100. Consequently, the impugned judgment dated 21.01.2019 is upheld.

B. Criminal Miscellaneous Petitions challenging the Judgment dated 29.05.2024 and for Quashing of Complaint Cases

101. The particulars of the fourteen criminal miscellaneous petitions under Section 482 of Cr.P.C., challenging the common judgment dated 29.05.2024 passed by the learned Sessions

Court in the fourteen revision petitions arising out of the order on sentence dated 22.05.2019, are tabulated below. It is to be noted that seven of these petitions also seek quashing of the complaint cases under Section 138 of NI Act.

102. The petitioners, by way of the present petitions under Section 482 of the Cr.P.C., have essentially laid a two-fold challenge. First, they assail the very maintainability of the complaints instituted by respondent no. 1 under Section 138 of the NI Act and seek their quashing by invoking the inherent jurisdiction of this Court, contending that permitting the complaints to continue amounts to an abuse of the process of law. Second, they challenge the common judgment dated 29.05.2024 passed by the learned Sessions Court insofar as it relates to the sentence awarded to the petitioners in the said complaint cases.

(i) Whether the Complaint Cases under Section 138 of NI Act deserve to be quashed?

103. At the outset, it is noted that these petitions under Section 482 of Cr.P.C. came to be filed only in the year 2024, seeking quashing of complaint cases which were instituted as far back as in the year 2013. By the time these petitions were instituted, the complaints had already culminated in judgments of conviction dated 13.04.2018 passed by the learned Trial Court, which had further been affirmed by the learned Sessions Court vide judgment dated 21.01.2019. Thus, what is sought to be quashed at this stage by the petitioners are complaint cases in which the trial has concluded long ago and the petitioners already stand convicted.

104. As held in the preceding part of this judgment, the criminal revision petitions challenging the judgment dated 21.01.2019 affirming the conviction were themselves filed after an extraordinary delay of more than five years. This Court has found no sufficient cause to condone the said delay and, accordingly, the revision petitions have been dismissed as barred by limitation. The findings of conviction recorded by the learned Trial Court vide judgment dated 13.04.2018 and affirmed by the learned Sessions Court vide judgment dated 21.01.2019, therefore, remain undisturbed.

105. In these circumstances, the present petitions under Section 482 of Cr.P.C., insofar as they seek quashing of the complaint cases themselves, clearly appear to be yet another attempt of the petitioners to assail their conviction, indirectly, by invoking the inherent jurisdiction of this Court. This Court was, therefore, not inclined to entertain these petitions also, considering the delay and laches on the part of the petitioners in seeking quashing of

complaint cases after more than eleven years of their institution and after the entire trial had concluded in conviction.

106. However, since petitioner no. 1, both in person and through his learned counsel, repeatedly urged before this Court that the petitioners are, in fact, the real victims in the present case and that they have been wrongly convicted in these cases which, according to them, had ceased to be maintainable in law, this Court considers it appropriate to examine the principal grounds urged in support of the present petitions and adjudicate the same on merits.

107. To reiterate, essentially, the main argument of the learned counsel for the petitioners seeking quashing of the complaint cases is that these complaints under Section 138 of NI Act had ceased to be maintainable. It was argued that these seven complaints arose out of the dishonour of cheques issued pursuant to the original agreement and the three supplementary agreements, the last being dated 09.08.2012. But thereafter, the parties had entered into a Consent Agreement dated 21.04.2013, and arrived at a full and final settlement. Under this settlement, the liability was restructured; four fresh post-dated cheques aggregating to ₹10 crores were issued; and the settlement ultimately culminated in the consent decree dated 27.01.2016. According to the petitioners, once the complainant accepted the fresh settlement and the fresh cheques, the earlier cause of action stood extinguished and merged into the new settlement. Therefore, the original complaints under Section 138 of NI Act could no longer survive. If the settlement failed, the complainant's remedies were: to prosecute the dishonour of the four fresh settlement cheques, or pursue civil remedies for breach of settlement, but not to continue the original complaints. Heavy reliance was placed on the decision in Gimpex (P) Ltd. (supra) to argue that a subsequent settlement ‗subsumes' the earlier complaint. They also relied upon paragraph 5 of the consent decree dated 27.01.2016, where it was recorded that the original agreement and supplementary agreements would not revive.

108. The learned counsel for the respondent no. 1/complainant disputed the above interpretation and contended that the Consent Agreement dated 21.04.2013 did not supersede or novate the Third Supplementary Agreement, as they were only supplemental in nature. Most importantly, Clause 6 of the Consent Terms expressly governed the fate of the pending criminal complaints, by providing that the seven complaint cases would be

withdrawn only upon receipt of the entire ₹10 crores under the settlement; and since admittedly, the petitioners never paid the settlement amount, the contingency for withdrawal never arose. Therefore, respondent no. 1 was contractually entitled to continue prosecuting the original complaints. It was also argued that the four settlement cheques were issued merely as security for performance of the settlement, and not as substitutes for the earlier dishonoured cheques. Consequently, respondent no. 1 rightly did not institute fresh Section 138 complaints on the settlement cheques, because the Consent Terms themselves contemplated continuation of the pending complaints upon default. It was contended that decision in Gimpex (P) Ltd. (supra) is clearly distinguishable on facts.

109. Insofar as the aforesaid contention of the petitioners is concerned, this Court notes that there is no dispute regarding the broad sequence of events between the parties. The record reveals that the parties had initially entered into the agreement dated 30.05.2010, which was thereafter followed by three Supplementary Agreements dated 21.09.2011, 04.04.2012 and 09.08.2012. Pursuant to the Third and last Supplementary Agreement dated 09.08.2012, eight post- dated cheques were issued, out of which seven cheques are the subject matter of the present complaint cases. Upon dishonour of the said seven cheques and completion of the statutory requirements under Section 138 of the NI Act, respondent no. 1 had instituted the seven complaint cases in the year 2013.

110. It is also a matter of record that, during the pendency of the said complaint cases, the parties entered into a Consent Agreement dated 21.04.2013 with a view to amicably resolve their disputes. Under the said agreement, the petitioners agreed to pay a total sum of ₹10.40 crores to respondent no. 1, out of which ₹40 lakhs had already been paid through RTGS and the balance amount of ₹10 crores was agreed to be paid in four instalments, i.e., ₹5 crores on or before 31.07.2013, ₹3 crores on or before 31.12.2013, ₹1 crore on or before 30.06.2014 and the remaining ₹1 crore on or before 30.09.2014. To secure this amount, four post-dated cheques corresponding to the aforesaid instalments were also issued by the petitioners in favour of respondent no. 1. Thus, the settlement contemplated not only the restructuring of the payment schedule but also the issuance of fresh cheques as security for payment of the agreed settlement amount.

111. However, it is an admitted position that the petitioners herein failed to adhere to the terms and conditions of the Consent Agreement. The agreed installments were not paid in

accordance with the settlement and the obligations undertaken by the petitioners remained unfulfilled. In the meantime, the civil suit instituted by respondent no. 1, being CS (OS) No. 3037/2012, also came to be decreed by this Court vide judgment and decree dated 27.01.2016 in terms of the Consent Agreement dated 21.04.2013. Even thereafter, since the decretal amount remained unpaid, respondent no. 1 was constrained to initiate execution proceedings for enforcement of the said money decree.

112. In this background, it becomes material to examine Clause 6 of the Consent Agreement dated 21.04.2013, which specifically governs the effect of the settlement on the pending complaint cases under Section 138 of the NI Act. The same reads as under:

> *—6. Murli Projects Pvt. Ltd. has instituted 8 (Eight) complaints under Section 138 N.I. Act against the above contemnors before Addl. Chief Metropolitan Magistrate, Karkardooma in respect of Cheque Nos. 021677, 021678, 021679, 021680, 021681, 021682, 021683 and 021684 issued by the said contemnors. The Ld. Court has issued summons in the said 138 N.I. Cases. However, in view of the above settlement, till 31.7.2013, Murli Projects Pvt. Ltd. shall ensure that no coercive steps are taken in respect of their 138 N.I.A cases. In case the cheque issued for the payment of Rs.5 crores (Rupees five crores) is encashed or payment is made otherwise of Rs.5 crores (Rupees five crores) prior to 31.7.2013 then Murli Projects Pvt. Ltd. shall not take any coercive steps in respect of these cheques till 31.12.2013 and similarly steps will be taken in this regard in respect of the subsequent two cheques dated 30.6.2014 and 30.9.2014. In case any of the 4 payments are not made, then Murli Projects Pvt.*

Ltd. shall be at liberty to proceed with the said criminal case against the Contemnors and others in accordance with law. In case the payment of Rs.10 crores is received in total as per the above schedule ending on 30.9.2014 then Murli Projects Pvt. Ltd. shall withdraw the above criminal cases instituted against the contemnors.‖

113. A plain reading of the aforesaid clause leaves no room for ambiguity, inasmuch as the parties had consciously agreed that the pending complaint cases would not be withdrawn merely because a settlement had been arrived at or because fresh cheques had been issued pursuant thereto. On the contrary, the agreement clearly stipulated that respondent no. 1 would only defer taking coercive steps in the pending complaint cases, subject to the

petitioners honouring the payment schedule agreed upon under the Consent Agreement. The clause further specifically provided that, in the event any of the four agreed payments was not made, respondent no. 1 would be at liberty to proceed with the pending criminal cases in accordance with law. It was only upon receipt of the entire settlement amount of ₹10 crores in accordance with the agreed schedule that respondent no. 1 had undertaken to withdraw the pending complaint cases.

114. Admittedly, the petitioners failed to comply with the payment schedule under the Consent Agreement. The contingency upon which withdrawal of the complaint cases depended, therefore, never arose. Consequently, respondent no. 1 became entitled, in terms of Clause 6 itself, to continue prosecuting the pending complaint cases. In view of this specific stipulation in the Agreement, the argument advanced on behalf of the petitioners that respondent no. 1 was obliged to withdraw the complaint cases or that the complaints had automatically ceased to be maintainable upon execution of the Consent Agreement is wholly misconceived and without merit.

115. The petitioners have also sought to rely upon paragraph 5 of the order dated 27.01.2016 passed by this Court while decreeing CS (OS) No. 3037/2012. The said paragraph reads as under:

> *5. There would be some ambiguity on account of the language contained in paragraph 7 of the consent terms/Agreement dated 21.04.2013, but the counsel for the plaintiff concedes that the original agreement and the supplementary agreement as mentioned in para 7 of the consent terms/Agreement dated 21.04.2013, do not revive, and the plaintiff will be satisfied on receiving the amounts as stated in the consent terms/Agreement dated 21.04.2013.*

116. This Court is unable to accept the interpretation sought to be placed upon the aforesaid paragraph by the petitioners. The observations contained in paragraph 5 only clarifies that, upon respondent no. 1 receiving the entire settlement amount in terms of the Consent Agreement, the earlier agreements and supplementary agreements would not revive and the complainant would stand satisfied with the settlement amount. However, the present case does not fall within that eventuality, since the petitioners had failed to honour the settlement and had not paid the agreed amount in terms of the Consent Agreement. The situation

arising from such default was specifically contemplated and governed by Clause 6 of the Consent Agreement itself, which expressly preserved the right of respondent no. 1 to continue with the pending complaint cases in the event of non-payment. Therefore, paragraph 5 of the order dated 27.01.2016, which clarified Clause 7 of the Agreement, cannot be read so as to nullify or override the express stipulation contained in Clause 6 of the Agreement.

117. In this background, this Court is of the considered opinion that the reliance placed by the petitioners on the decision of the Hon'ble Supreme Court in Gimpex (P) Ltd. (supra) is also misplaced. In the said case, the Hon'ble Supreme Court was dealing with a case where a complaint under Section 138 of the NI Act had initially been filed on account of the dishonour of a set of cheques. During the pendency of the said complaint, the parties had entered into a settlement pursuant to which fresh cheques were issued by the accused towards compliance with the settlement. Those settlement cheques were also dishonoured, leading to the institution of a second complaint under Section 138 of the NI Act. Consequently, there existed two sets of complaint cases arising out of the same underlying transaction - one based on the dishonour of the original cheques and the other based on the dishonour of the settlement cheques. In those facts, the Hon'ble Supreme Court held that permitting both prosecutions to continue would be contrary to the object of the NI Act. It was observed that once the parties had entered into a settlement and the complainant had chosen to prosecute the dishonour of the settlement cheques, the earlier complaint could not be continued, as a complainant cannot pursue two parallel prosecutions in respect of the same underlying transaction.

118. The facts of the present case, however, stand on an entirely different footing. Though the petitioners had issued four post-dated cheques pursuant to the Consent Agreement dated 21.04.2013, the said cheques were never presented for encashment by respondent no. 1 and, consequently, no fresh complaints under Section 138 of the NI Act were ever instituted on that ground. Thus, the situation of two parallel prosecutions, which weighed with the Hon'ble Supreme Court in Gimpex (P) Ltd. (supra), simply does not arise in the present case. More importantly, the petitioners and the respondent no. 1 herein themselves had consciously agreed, as per Clause 6 of the Consent Agreement, that in the event of default in making any of the agreed payments, respondent no. 1 would be at liberty to proceed with the pending complaint cases. Thus, unlike Gimpex (P) Ltd. (supra), where the complainant

had chosen to prosecute the dishonour of the subsequent cheques, respondent no. 1, in the present case, has acted strictly in accordance with the terms of the settlement itself by continuing the complaint cases already pending against the petitioners. The continuation of those complaints was, therefore, not only permissible in law but was also in consonance with the express agreement entered into between the parties. Therefore, this Court is of the considered opinion that the reliance placed by the petitioners on Gimpex (P) Ltd. (supra) is misconceived and does not advance their case in any manner whatsoever.

119. Consequently, this Court finds the principal ground, on which quashing of the complaint cases has been sought, to be devoid of merit.

120. Accordingly, the prayer seeking quashing of the complaint cases is rejected.

(ii) Whether there is any infirmity in the impugned judgment dated 29.05.2024?

121. The petitioners have also challenged, on several grounds, the impugned judgment dated 29.05.2024, which relates to the order on sentence. The principal contention is that petitioner no. 1 cannot be subjected to imprisonment in the present complaint cases since he had already undergone detention in civil prison for a period of three months in the execution proceedings arising out of the money decree passed by this Court. It is thus argued that any further sentence of imprisonment would amount to double jeopardy. The petitioners have also contended that the Courts below have failed to appropriately adjust the amounts already paid by them to the complainant while determining the quantum of fine and compensation.

122. Insofar as the plea of double jeopardy is concerned, the learned Sessions Court has examined the issue in considerable detail in the impugned judgment dated 29.05.2024 and has dealt with the same by making the following observations:

> *—14. The second limb of argument that the order dated 22.05.2019 amounts to double jeopardy as the Revisionist No.2 has already undergone civil imprisonment for a period of three months in the Execution No. 69/2016 is also devoid of merit. The concept of double jeopardy is enshrined in Article 20(2) of the constitution of India and section 300 Cr.P.C. Article 20(2) prohibits a person from being prosecuted and punished for the same offense more than once. This principle of double jeopardy prevents individuals from being*

> *subjected to multiple trials or punishments for the same offense. Section 300 Cr.PC also envisages the concept of double jeopardy. The section reads as under:*
>
> *xxx*
>
> *15. Article 20(2) and section 300 Cr.PC protects individuals from being subjected to multiple trials or punishments for the same offense and does not bar simultaneous institution of proceedings under civil and criminal law. Civil imprisonment in execution of a decree cannot be equated to punishment for an offence and therefore the principle of double jeopardy has no applicability in the present case. In complaint under section 138 Negotiable Instrument Act, dishonour of a cheque is a cognizable offence subject to fulfilment of condition precedent as laid down in the proviso appended thereto.*

The cause of action for institution of the civil suit is grant of loan whereas that of the criminal case was return of a cheque inter alia on the premise that the account of the accused was insufficient to honour it or that it exceeded the amount arranged to be paid from that account by an agreement with the Bank. Both the proceedings may be instituted simultaneously. Hon'ble Supreme Court in Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729 held as under:

> *8. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceedings, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-à-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree.*
>
> *9. Section 138 of the Negotiable Instruments Act provides that dishonour of a cheque subject to fulfilment of condition precedent as laid down in the proviso appended thereto is a cognizable offence.*
>
> *10. The cause of action for institution of the civil suit was grant of loan whereas that of the criminal case was return of a cheque inter alia on the premise that the account of the*

> *accused was insufficient to honour it or that it exceeded the amount arranged to be paid from that account by an agreement with the Bank.*
>
> *11. Section 138 of the Act contains a non obstante clause.*

In terms of Section 139 of the Act, a presumption in favour of the holder of the cheque may be raised that he had received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

xxx xxx xxx

28. If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant in some other provisions of the Act, no other provisions of the Evidence Act or for that matter any other statute had been brought to our notice."

16. The recovery initiated on the basis of a debt and a criminal proceeding initiated under section 138 Negotiable Instrument Act on dishonour of cheque and non-payment of cheque amount may be instituted simultaneously and decision in one is not binding on other. Furthermore even a person can be tried for two distinct offences arising out of same cause of action. In R.P. Mathur Prop. Radhika Leather Fashions v. S.R.P. Industries Ltd., 2009 SCC OnLine Del 259, Hon'ble High Court held as under:

> *13. Thus, in the facts of this case two sets of offence have been disclosed categorically and clearly, that is offence of cheating in relation to the complaint subject matter of the CBI investigation and commission of offence under Section 138 of N.I. Act on account of non-payment of the cheque amount within the time prescribed for which the notice was issued to the petitioner by the complainant in accordance with the scheme of the provisions under Section 138 of the N.I. Act. It is not a case of double jeopardy inasmuch as separate punishments are provided for the two set of offences, that is for dishonouring of the cheque under Section 138 of the N.I. Act which cannot exonerate the petitioner for having committed other offences under Section 420/477A/120B IPC to have*

> *cheated the complainant on the basis of false assurance given by him supported by the bankers etc.*

17. The Hon'ble Supreme Court in Sangeetaben Mahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621 held that to attract the principle of Double Jeopardy enshrined under Article 20(2) of the constitution of India and section 300 Cr.PC., the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different and observed as under:

> *24. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.*

In the present case, order dated 27.01.2016 passed in CS(OS) 3037/2012 by the Hon'ble High Court, whereby the suit was disposed off and decreed in favour of the plaintiff (complainant) and against the defendants (Revisionists) as per the terms recorded in the consent terms/Agreement dated 21.04.2013 cannot be deemed to be trial for an offence and order passed in execution cannot be deemed to be conviction of the Revisionists for an offence so as to attract the principle of double jeopardy. The contention that since the Revisionist No.1 has been sent to civil prison for three months by the Hon'ble High Court vide order dated 30.11.2018, nothing remains for Ld. MM or this court to proceed further against the petitioner is without merit as the principle of double jeopardy is not attracted in the facts and circumstances of the case.

18. It is pertinent to observe that though principle of double jeopardy is not applicable to the facts of present case, however the Ld. MM has taken into account three months civil imprisonment of Revisionist No.2 in terms of order dated 30.11.2018 passed by the Hon'ble High Court in Execution petition No. 69/2016 and vide order on sentence dated 22.05.2019

reduced the sentence of Revisionist no.2 from 6 months (as per earlier order on sentence all dated 23.04.2018) to 3 months...॥

123. In the facts and circumstances of the present case, this Court finds no reason to take a view different from that adopted by the learned Sessions Court.

124. The law on the issue is fairly well-settled. Proceedings for recovery of money through a civil suit and criminal proceedings under Section 138 of the NI Act operate in distinct fields and are founded on different causes of action. Only because both proceedings arise out of the same commercial transaction does not render either of them impermissible. The object, nature and consequences of the two proceedings are entirely different. While a civil proceeding is intended to secure recovery of the amount due, prosecution under Section 138 of the NI Act is for commission of a statutory offence arising from the dishonour of a cheque and the failure to make payment despite receipt of the statutory notice.

125. In D. Purushotama Reddy v. K. Sateesh: (2008) 8 SCC 505, the Hon'ble Supreme Court held that - it is beyond any doubt that, in respect of the same transaction, both a civil suit for recovery and criminal proceedings under Section 138 of the NI Act are maintainable and may continue simultaneously.

126. Similarly, in Vishnu Dutt Sharma v. Daya Sapra: (2009) 13 SCC 729, the Hon'ble Supreme Court held that the pendency or adjudication of a civil proceeding does not bar prosecution under Section 138 of the NI Act. The Supreme Court also observed that although the factual foundation of the two proceedings may overlap, the causes of action, the nature of the proceedings and the standard of proof applicable in civil and criminal jurisdictions are fundamentally different. It was further held that a judgment in a civil proceeding is not binding upon a criminal court and vice versa.

127. In the opinion of this Court, the aforesaid principles furnish a complete answer to the contention raised by the petitioners herein. The detention of petitioner no. 1 in civil prison was not on account of conviction for any criminal offence, but rather, it was a consequence of the execution proceedings initiated for enforcement of the money decree passed by this Court. Such detention cannot be equated with punishment awarded upon being convicted for an offence under Section 138 of the NI Act. There have not been two prosecutions for the same offence.

128. Moreover, in this execution proceedings, the petitioner no. 1 was ordered to be detained in civil prison for a period of three months in execution of the money decree. The order dated 30.11.2018 records as under:

> *—5. I am satisfied from the past conduct of the judgment-debtors that the judgment-debtors, inspite of being in a position to pay the decretal amount, are managing their affairs so as to avoid execution of the decree. The judgment-debtor no.2 is found to have acted in number of films and the explanation each time is, either of the monies therefor having been received earlier or the judgment-debtor no.2 performing without consideration.*
>
> *6. The decree is ordered to be executed by detention of the judgment debtor no.2 Rajpal Navrang Yadav in civil prison for a period of three months. The judgment-debtor no.2 is ordered to be taken into custody forthwith, to be detained in civil prison.*
>
> *7. The Court Master to call for the marshal and handover the judgment debtor no.2 to the marshal for compliance of the order along with a copy of this order.*
>
> *8. Since the decree-holder has not suggested any other mode of execution, the execution is closed with the aforesaid...॥*
>
> *129. A plain reading of the aforesaid order shows that the decree was sought to be executed only by resorting to one of the permissible modes available under law, i.e., the detention of the judgment-debtor in civil prison. The execution proceedings were thereafter closed only because the decree-holder had not sought any other mode of execution. The order does not record that the decretal amount had been recovered or that the decree stood satisfied.*
>
> *130. In this regard, the learned counsel appearing for respondent no. 1 also rightly drew the attention of this Court to Section 58(2) of the Code of Civil Procedure, 1908, which expressly provides that a judgment-debtor shall not be discharged from his debt merely by reason of his detention in civil prison. Thus, detention in civil prison is only one of the modes of execution of a decree and does not result in satisfaction or discharge of the decretal liability.*

> *131. However, the proceedings under Section 138 of the NI Act stand on an entirely different footing. Section 138 creates a statutory offence, and upon conviction, the Court is empowered to award the punishment prescribed therein, which may include imprisonment as well as fine. The detention of a judgment-debtor in civil prison in execution of a money decree can, therefore, by no stretch of imagination, be equated with a sentence awarded after conviction for a criminal offence.*

> *132. It is also pertinent to note that despite the inapplicability of the principle of double jeopardy, the learned Courts below have taken into consideration the fact that petitioner no. 1 had remained in civil prison for a period of three months. It is for this reason that, the sentence of simple imprisonment originally awarded to petitioner no.*

1, was reduced from six months to three months vide the impugned judgment. Thus, the period of detention undergone by the petitioner was not ignored while determining the appropriate sentence.

133. Therefore, for the reasons recorded hereinabove, this Court is of the opinion that the principle of double jeopardy embodied in Article 20(2) of the Constitution of India and Section 300 of the Cr.P.C. has no application to the facts of the present case. The argument of the petitioners that no further sentence of imprisonment could have been imposed merely because petitioner no. 1 had undergone detention in civil prison is, therefore, devoid of merit.

134. Insofar as the quantum of fine is concerned, this Court is of the considered opinion that the learned Sessions Court has duly taken into consideration the amounts already paid by the petitioners to the complainant pursuant to the settlement between the parties. The impugned judgment itself reflects that appropriate adjustment has been granted while determining the quantum of fine. The fine imposed upon petitioner no. 1 was reduced from ₹1.60 crores to ₹1.35 crores in each of the seven complaint cases. Likewise, the fine imposed upon petitioner no. 2 was reduced from ₹10 lakhs to ₹7,65,665/- in each case. This was on account of petitioners having already paid a sum of about ₹1.91 crores to the complainant/ respondent no. 1 in the past.

135. This Court, therefore, finds no infirmity in the exercise undertaken by the learned Sessions Court in determining the quantum of fine, and no further interference is called for

on this ground.

136. However, it is also a matter of record that during the pendency of the present proceedings before this Court, petitioner no. 1 has deposited a total sum of ₹2.25 crores, which has already been released in favour of respondent no. 1. Since the said payment has been received by the complainant towards the liability arising out of the present proceedings, the said amount shall be given due adjustment while computing the balance amount of fine/compensation payable by the petitioners, to the respondent no. 1, pursuant to the impugned judgment.

137. Insofar as the prayer of the petitioners seeking the benefit of the Probation of Offenders Act is concerned, this Court, after giving its thoughtful consideration to the facts and circumstances of the case, is not inclined to extend such benefit.

138. While considering whether an accused is entitled to be released on probation, the Court is required to examine not only his antecedents and how he conducts himself in the society, but also his conduct before the Court of law and the manner in which he has conducted himself throughout the judicial proceedings.

139. In the present case, the conduct of petitioner no. 1 has assumed relevance since the record reveals that on multiple occasions, undertakings were furnished before the Court, but the same were not honoured. During the civil proceedings as well as the execution proceedings before the Coordinate Benches of this Court, undertakings were given regarding payment of the amounts due towards the complainant. Those undertakings, however, remained unfulfilled, ultimately resulting in petitioner no. 1 being detained in civil prison for a period of three months in execution of the money decree. Thereafter, in the criminal proceedings under Section 138 of NI Act, despite the judgment of conviction having been affirmed by the learned Sessions Court in the year 2019, the petitioner did not challenge the same for more than five years and, when confronted with the delay, he sought to explain it by attributing the entire lapse to the alleged incorrect advice of his previous counsel - an explanation which this Court has already found to be devoid of merit in the preceding discussion.

140. Even before this Court, on the very first date of hearing, the Predecessor Bench had expressed its disinclination to interfere with these matters on merit. However, upon a

statement made on behalf of the petitioner that he was willing to amicably resolve the dispute, indulgence was shown and the parties were afforded an opportunity to settle the matter. It was on this consideration that the sentence awarded to the petitioner was suspended. Thereafter, over a considerable period, repeated opportunities were granted to the petitioner to honour the settlement. The petitioner, both personally and through learned Senior Counsel appearing on his behalf, made statements before this Court acknowledging that he was bound to return the money to the complainant for which he sought repeated adjournments to arrange the necessary funds. On several occasions, assurances and undertakings were given that payment would be made within the time sought from the Court. Despite these repeated opportunities and assurances, the petitioner no. 1 failed to honour the undertakings furnished before this Court, due to which, this Court was constrained to direct the petitioner no. 1 to surrender before the jail authority to serve his sentence. Though certain payments were subsequently made and, on that basis, further indulgence was shown by this Court by again suspending the sentence, no final settlement could be arrived at. This Court also made earnest efforts to facilitate an amicable resolution between the parties. However, at the end of the proceedings, petitioner no. 1 categorically refused to make any further payment to the complainant.

141. What is even more significant is that, on the date when the hearing in the present petitions concluded, petitioner no. 1 stated before this Court that he was not willing to pay any amount to the complainant and would rather go to jail five times than returning the money.'

142. Needless to state that in case a litigant wishes to choose path of imprisonment rather than abiding by multiple undertakings given by him in the Court, it is entirely his choice. Law is not a script that can be rewritten at the will of an actor, nor can legal positions be altered with every change of strategy whosoever the litigant may be. Courts adjudicate on the basis of settled legal principles and the record before them, and apply law equally to all, and expect from every litigant fairness and respect for the judicial process, the present litigant cannot be an exception to this rule.

143. In the above-mentioned circumstances, this Court is of the considered opinion that petitioner no. 1 does not deserve the discretionary benefit of release on probation under the Probation of Offenders Act. The prayer is, accordingly, rejected.

(iii) Conclusion

144. In view of the foregoing discussion, this Court finds no infirmity in the common judgment dated 29.05.2024 passed by the learned Sessions Court insofar as it upholds the sentence awarded to the petitioners in the present complaint cases.

145. However, as already noted above, during the pendency of the present petitions before this Court, the petitioners have deposited a further sum of ₹2.25 crores, which has already been released in favour of respondent no. 1/complainant. Since the said amount has been received by the complainant towards the liability arising out of the present proceedings, the petitioners are entitled to due adjustment thereof while computing the amount of fine payable by them. Accordingly, to the limited extent of adjusting the aforesaid payments made to the complainant, the sentence awarded to the petitioners deserves to be modified.

146. The sentence awarded to the petitioners shall, therefore, stand modified in the following terms:

> *(i) Petitioner no. 1 (Convict No. 2), Rajpal Naurang Yadav, is sentenced to undergo simple imprisonment for a period of three months in each of the seven complaint cases and to pay a fine of ₹1.05 crores in each case. In default of payment of fine, he shall undergo simple imprisonment for a further period of six months. All the substantive sentences shall run concurrently. Out of the fine of ₹1.05 crores in each complaint case, a sum of ₹1,04,75,000/- shall be paid to the complainant and ₹25,000/- shall be credited to the State.*

> *(ii) Petitioner no. 2 (Convict No. 3), Radha Rajpal Yadav, is sentenced to pay a fine of ₹5,51,380/- to the complainant in each complaint case. In default of payment of fine, she shall undergo simple imprisonment for a period of three months. The sentences in all the seven complaint cases shall run concurrently.*

> *(iii) Convict No. 1, M/s Shree Navrang Godawari Entertainment Pvt. Ltd., having already been struck off from the register of the Registrar of Companies and adequate compensation having been directed to be paid by Convict Nos. 2 and 3, stands admonished in all the seven complaint cases, as directed by the learned Sessions Court.*

147. Except to the limited modification in the quantum of fine as aforesaid, the impugned

judgment dated 29.05.2024 is affirmed.

148. Consequently, CRL.M.C. Nos. 4870/2024, 4871/2024, 4872/2024, 4873/2024, 4876/2024, 4878/2024, 4879/2024, 4880/2024, 4881/2024, 4882/2024, 4883/2024, 4884/2024, 4885/2024 and 4886/2024 stand disposed of in the above terms.

C. Final Order

149. In view of the foregoing discussion and the conclusions recorded hereinabove, the following directions are passed:

> *(i) CRL.REV.P. Nos. 797/2024, 798/2024, 799/2024, 800/2024, 801/2024, 802/2024 and 803/2024, along with all pending applications, are dismissed as being barred by limitation.*

Consequently, the judgments dated 13.04.2018 passed by the learned Trial Court and 21.01.2019 passed by the learned Sessions Court, whereby the petitioners were convicted for the offence punishable under Section 138 of the NI Act, are affirmed.

(ii) CRL.M.C. Nos. 4870/2024, 4871/2024, 4872/2024, 4873/2024, 4876/2024, 4878/2024, 4879/2024, 4880/2024, 4881/2024, 4882/2024, 4883/2024, 4884/2024, 4885/2024 and 4886/2024, alongwith all pending applications, are disposed of in the above terms. The prayer seeking quashing of the complaint cases is rejected. The common judgment dated 29.05.2024 passed by the learned Sessions Court is upheld, subject only to the modification in the quantum of fine as directed in the preceding paragraphs, on account of the further amount of ₹2.25 crores deposited by the petitioners before this Court and released in favour of respondent no.

150. However, the order on sentence, as modified hereinabove, shall remain suspended for a period of two months from date, to enable the petitioners to avail of such remedies as may be available to them in law, upon expiry of which period, the petitioners shall undergo the sentence in accordance with law.

151. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J JULY 10, 2026/A/vc/zp T.D./T.S.