HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M)193/2026
CM 3311/2026

Reserved on:03.06.2026.
Pronounced on:09.07.2026
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Whether operative part or full judgment has been pronounced: Full

Gulla Ganaie Alias Gulzar Ahmad Ganaie
Aged 67 Years
S/o Assadullah Ganaie
R/o ZazbughShogpora Tehsil and District Budgam.

…Petitioner(s)

Through: Mr. Irshad Rasheed, Advocate

Vs.

Ghulam Qadir Sheikh
S/o Mohammad Ismail Sheikh
R/o Yarikhah Tehsil Khansahib District Budgam
...Respondent(s)

Through:

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

JUDGMENT

1) Through the medium of the instant petition filed under Article 227 of the Constitution of India, the petitioner seeks quashment of the execution proceedings initiated before the Court of the learned Chief Judicial Magistrate, Budgam vide order dated 17.11.2025, pursuant to the disposal of the complaint under Section 138 of the Negotiable Instruments Act, together with the consequential order dated 06.05.2026, whereby the learned Chief Judicial Magistrate directed the complainant to furnish the particulars of the petitioner's property so that appropriate steps could be taken towards its attachment.

BRIEF FACTS:

2) The factual matrix of the case is that the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India seeking quashment of the execution proceedings initiated by the learned Chief Judicial Magistrate, Budgam vide order dated 17.11.2025, and the consequential order dated 06.05.2026, whereby directions came to be issued to the complainant to furnish the particulars of the petitioner's property for the purposes of attachment in connection with the execution proceedings.

3) The record reveals that the respondent had instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Court of learned Chief Judicial Magistrate, Budgam alleging dishonour of cheque issued by the petitioner. During the pendency of the said complaint, the parties entered into a compromise dated 26.07.2024. As per the terms of the compromise, the petitioner allegedly agreed to pay an amount of Rs.6.60 lakhs to the respondent whereas the respondent undertook to provide a patch of land to the petitioner.

4) Pursuant to the compromise, the learned Chief Judicial Magistrate, Budgam vide order dated 26.07.2024 recorded the statements of the parties, dismissed the complaint and acquitted the petitioner.

5) According to the petitioner, upon dismissal of the complaint and acquittal of the accused, the proceedings under Section 138 of the

Negotiable Instruments Act stood finally concluded and the learned Magistrate became *functus officio.*

6) The grievance of the petitioner is that despite culmination of the criminal proceedings, the respondent instituted execution proceedings before the learned Chief Judicial Magistrate alleging breach of the compromise. The learned Chief Judicial Magistrate entertained the same vide order dated 17.11.2025 and thereafter passed the consequential order dated 06.05.2026 directing the complainant to furnish the particulars of the petitioner's property for the purposes of attachment.

7) Aggrieved thereof, the petitioner has approached this Court contending that the impugned proceedings are wholly without jurisdiction and constitute an abuse of the process of law.

SUBMISSIONS ON BEHALF OF PETITIONER:

8) Learned counsel for the petitioner submits that the learned Chief Judicial Magistrate lacked inherent jurisdiction to entertain execution proceedings after dismissal of the complaint and acquittal of the petitioner. It is contended that once the complaint under Section 138 of the Negotiable Instruments Act stood disposed of vide order dated 26.07.2024, no proceedings survived before the criminal court and the learned Magistrate became *functus officio*.

9) It is further submitted that the order dated 26.07.2024 merely records the compromise arrived at between the parties and the consequential acquittal of the petitioner. The said order does not contain any executable direction, adjudication, decree, recovery certificate or order of compensation capable of being enforced through coercive process.

10) Learned counsel argues that a compromise entered into between private parties during pendency of criminal proceedings does not acquire the status of an executable decree merely because it has been placed before a criminal court. Any alleged breach of the compromise may furnish an independent cause of action but cannot be enforced by way of execution proceedings before a criminal court after disposal of the complaint.

11) Reliance is placed upon the judgment of the Hon'ble Supreme Court in **'M/s Gimpex Private Limited v. Manoj Goel', (2022) 11 SCC 705**, to contend that once a settlement is arrived at between the parties, rights and obligations thereafter flow from the settlement itself and not from the original complaint proceedings. It is submitted that the remedy for breach of settlement lies elsewhere and not by seeking execution of concluded criminal proceedings.

12) Reliance is also placed upon **'Lalit Kumar Sharma v. State of Uttar Pradesh',(2008) 5 SCC 638**, to contend that obligations arising out of a compromise constitute fresh and independent obligations and any dispute regarding their performance requires adjudication in accordance with law.

13) It is next submitted that attachment of property is a coercive process available only where specifically authorized by law. In the absence of any order imposing fine, compensation or any executable monetary liability, the learned Magistrate could not have directed attachment of the petitioner's property.

14) Learned counsel further submits that the compromise itself contemplated reciprocal obligations on the part of the respondent regarding provision of a patch of land. Questions relating to performance of reciprocal promises, breach, readiness and willingness are disputed questions requiring adjudication before a competent forum and cannot be summarily determined in execution proceedings before a criminal court.

15) Accordingly, it is argued that the impugned proceedings and order dated 06.05.2026 are wholly without jurisdiction, *coram non judice* and liable to be quashed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

16) Heard learned counsel for the parties and perused the record.

LEGAL ANALYSIS:

17) Before adverting to the merits of the controversy, it is considered appropriate to clarify certain apparent drafting errors occurring in the writ petition. A perusal of the record reveals that though the petition describes the learned Chief Judicial Magistrate, Budgam as respondent No. 1 and the original complainant as respondent No. 2, the only contesting respondent in the present proceedings is the original complainant, namely Ghulam Qadir Sheikh S/o Mohammad Ismail Sheikh, R/o Yarikhah, Tehsil Khansahib, District Budgam. Accordingly, all references to respondent No. 2 in the present judgment shall be construed as references to the said respondent. It is further noticed that the petition seeks quashment of the order dated 04.05.2026. However, the record reveals that the order impugned is in fact the order dated 06.05.2026, which is consequential to and emanates from the execution proceedings initiated vide order dated 17.11.2025. Accordingly, wherever the order dated 04.05.2026 finds mention in the petition or in this judgment, the same shall be read as a reference to the order dated 06.05.2026.

18) The principal question which arises for consideration in the present petition is whether, after recording the compromise between the parties, dismissing the complaint under Section 138 of the Negotiable Instruments Act and acquitting the petitioner vide order dated 26.07.2024, the learned Chief Judicial Magistrate retained jurisdiction to subsequently entertain execution proceedings and direct attachment of the petitioner's property on the allegation that the terms of the settlement had not been complied with.

19) It is not in dispute that the offence under Section 138 of the Negotiable Instruments Act is compoundable. Once the parties voluntarily settle their dispute and place such settlement before the criminal court, it is open to the Court to record the compromise and dispose of the complaint accordingly. Upon acceptance of the compromise and passing of a final order disposing of the complaint, the criminal proceedings attain finality.

20) The doctrine of *functus officio* embodies the settled principle that once a court has finally exercised the jurisdiction vested in it and pronounced its final order, it ceases to possess any further authority over the proceedings except to the extent specifically authorised by law. The doctrine ensures certainty and finality in judicial proceedings and prevents a court from reopening matters after its jurisdiction has been exhausted.

21) Applying the aforesaid principle to the present case, it is evident that after recording the statements of the parties regarding the compromise, the learned Chief Judicial Magistrate dismissed the complaint under Section 138 of the Negotiable Instruments Act and formally acquitted the petitioner vide order dated 26.07.2024. Upon passing the said order, the criminal proceedings stood concluded and the learned Magistrate became *functus officio*. Thereafter, the criminal Court ceased to possess any continuing jurisdiction over the complaint and could not thereafter reopen the proceedings unless such power was specifically traceable to a statutory provision.

22) At the same time, while disposing of a complaint on the basis of a compromise, the proper course ordinarily is not merely to record that the dispute has been amicably settled and proceed to acquit the accused. The court ought to incorporate the material terms of the settlement into the judicial order, hold the parties bound by the obligations undertaken by them and, wherever the settlement contemplates payment of money, clearly stipulate that in the event of default, the agreed amount shall be recoverable in accordance with the procedure prescribed under law. Such a course ensures that the judicial order itself becomes capable of enforcement in accordance with law.

23) The aforesaid procedure has also been authoritatively explained by the Division Bench of the High Court of Delhi in **'Dayawati v. Yogesh Kumar Gosain', 2017 SCC ONLINE DEL 11032**, wherein the Court laid down the manner in which a criminal court is required to deal with a settlement arrived at between the parties in proceedings under Section 138 of the Negotiable Instruments Act. The relevant observations are reproduced hereunder:

> *"III (xiv) Pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of the settlement entered into by and between them. This order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 of the Cr.P.C."*

24) The aforesaid direction clearly demonstrates that the power of recovery contemplated under Sections 421 and 431 of the Code can ordinarily be invoked only where, while disposing of the complaint, the criminal court has expressly accepted the undertakings of the parties, held them bound by the terms of the settlement and specifically provided that, in the event of default, the agreed amount shall be recoverable in accordance with Sections 431 and 421 of the Code. Admittedly, no such direction finds place in the order dated 26.07.2024 passed by the learned Chief Judicial Magistrate.

25) The aforesaid principle has been reiterated by the High Court of Delhi in '*Professional Technical Services v. Pavitra Milk Products Pvt. Ltd. & Ors.*', CRL.M.C. No. 1105/2019, decided on 19.08.2025, wherein, after considering the decision of the Hon'ble Division Bench in *Dayawati*, the Court explained the circumstances in which a settlement under Section 138 of the Negotiable Instruments Act becomes enforceable through Sections 431 and 421 of the Code of Criminal Procedure. The relevant observations are reproduced hereunder:

*"**16.** The Division Bench in Dayawati authoritatively settled the procedure to be followed in cheque dishonour complaints where mediation results in a settlement. A bare reading of the aforesaid extract reveals that Division Bench, after an exhaustive analysis of the legal position, observed that a mediated settlement in criminal compoundable offences, before the Mediation Centre, has the same binding effect as any lawful agreement. Upon being placed before the Court, it can be acted upon, as a final order, in the nature of compounding. The judgment, however, makes it clear that the enforceability of such settlement is contingent upon the Court accepting the terms of the settlement and also recording that the settlement has arrived at voluntary, with the consent of the parties. Once this satisfaction is recorded, the Court is required to pass a judicial order accepting the settlement and incorporating its terms, including any payment obligations under Section 147 of the NI Act. Only upon such an order being passed, signifying the Court's imprimatur, can the agreed sum be treated as an amount payable under an order of a criminal court.*

__17.__ The Division Bench further clarified that where a mediated settlement has been accepted and recorded by the Court, any breach of its terms by one of the parties, particularly the accused, cannot be permitted to frustrate the settlement or evade compliance. In such cases, the Court is empowered to enforce the undertaking through appropriate legal mechanisms, including proceedings under Section 431 read with Section 421 of Cr.P.C and, where applicable, contempt jurisdiction. However, in the absence of a judicial order accepting the mediated settlement, no enforceable rights arise under the criminal process and the aggrieved party must seek other appropriate remedies in accordance with law.

22. ....These clauses, when read with the ruling of the Division Bench in Dayawati, make it evident that, absent judicial affirmation and incorporation into a formal order, the Agreement, even if concluded through mediation, remains a private contractual arrangement. It cannot be clothed with the enforceability contemplated under Section 431 read with Section 421 of Cr.P.C."

26) The aforesaid exposition of law fortifies the principle that the power of recovery under Sections 421 and 431 of the Code does not arise merely because the parties have entered into a settlement. Such power becomes available only where the settlement has received the judicial imprimatur of the criminal court by way of an order accepting the settlement, incorporating its terms and rendering the agreed amount payable under a judicial direction. In the absence of such an order, the settlement continues to remain a private arrangement and any remedy for its breach must be worked out in accordance with law before the appropriate forum.

27) Having noticed the procedure prescribed by the Hon'ble Division Bench in Dayawati (supra), it would now be appropriate to examine the statutory provisions governing recovery by a criminal court. Sections 421 and 431 of the Code of Criminal Procedure, which assume significance in the present controversy, are reproduced hereunder:

> ***"421. Warrant for levy of fine.***
> *(1)When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may –*
> *(a)issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;*
> *(b)issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulte..."*
> ***"431. Money ordered to be paid recoverable as a fine.***
> *Any money (other than a fine) payable by virtue of any order made under this Code and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine :Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures "under Section 357", the words and figures "or an order for payment of costs under Section 359" had been inserted."*

28) A conjoint reading of the aforesaid provisions makes it manifest that the coercive modes of recovery contemplated therein become available only where the amount sought to be recovered is payable under a lawful judicial order passed by the criminal court in accordance with the provisions of the Code. Sections 421 and 431 regulate the mode and manner of recovery of such amounts; they cannot, in the absence of an executable judicial direction, be invoked to enforce the terms of every private compromise or settlement entered into between the parties.

29) The next question, therefore, is whether the order dated 26.07.2024 passed by the learned Chief Judicial Magistrate contains any executable judicial direction so as to attract the aforesaid statutory provisions. In order to answer this question, it would be apposite to reproduce the order dated 26.07.2024, which reads as under:

> ***"Parties along with their counsels present. The parties express that they have entered into a compromise and compromise agreement was presented in open court. The contents of the compromise agreement have been read over to the parties who have comprehended the same and have admitted its execution. The statements of the parties were recorded as per the compromise. The parties were identified by their respective counsels. As such the instant complaint doesn't require further proceedings which is dismissed as per the compromise. The accused is acquitted of the allegation. File be consigned to records after its compilation."***

30) A plain reading of the aforesaid order reveals that the learned Chief Judicial Magistrate merely recorded the statements of the parties, noticed that they had amicably settled their dispute and, on that basis, dismissed the complaint and acquitted the accused. Significantly, the order neither incorporates the terms and conditions of the settlement into its operative portion nor holds the parties bound by the terms thereof. More importantly, it neither stipulates the consequences of default nor declares that the agreed amount shall be recoverable in accordance with Sections 421 and 431 of the Code of Criminal Procedure. Consequently, the order does not contain any executable judicial direction capable of enforcement through the coercive machinery contemplated under the said provisions.

31) In these circumstances, once the complaint stood dismissed and the petitioner stood acquitted, the learned Chief Judicial Magistrate became *functus officio*. The omission to incorporate the settlement terms or the consequences of default into the order dated 26.07.2024 could not subsequently be cured by reopening the concluded proceedings or by assuming jurisdiction which had already stood exhausted upon passing of the final order.

32) It is equally well settled that jurisdiction cannot be created by implication or assumed on equitable considerations. A criminal court derives its authority solely from statute. Once its jurisdiction in the proceedings has been exhausted by passing a final order, it cannot thereafter exercise powers which were required to be exercised, if at all, before disposal of the complaint.

33) At this stage, it is also necessary to distinguish a compromise recorded by a criminal court from an award passed by a Lok Adalat. An award of a Lok Adalat is, by virtue of the statutory provisions governing such proceedings, deemed to be a decree of a civil court and is executable accordingly. A compromise recorded while disposing of a complaint under Section 138 of the Negotiable Instruments Act does not, merely by reason of its recording, acquire the status of a civil court decree. Its enforceability depends upon the nature of the judicial order passed by the criminal court.

34) In the present case, the order dated 26.07.2024 contains no executable judicial direction. Neither was any fine imposed nor any compensation directed to be recovered as if it were a fine. Equally, no amount was declared recoverable in accordance with Sections 421 and 431 of the Code. In the absence of such an executable judicial direction contained in the order dated 26.07.2024, there remained no judicial command capable of being enforced through the machinery contemplated under Sections 421 and 431 of the Code.

35) In the present case, the execution proceedings initiated vide order dated 17.11.2025, culminating in the consequential order dated 06.05.2026, were commenced after the learned Chief Judicial Magistrate had already exhausted the jurisdiction vested in the criminal court in relation to the complaint under Section 138 of the Negotiable Instruments Act. In the absence of any executable judicial direction contained in the order dated 26.07.2024, the assumption of jurisdiction to enforce the settlement by entertaining execution proceedings and invoking coercive measures for its enforcement was wholly without the authority of law. Consequently, the said proceedings cannot be sustained.

36) Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in **'M/s Gimpex Private Limited v. Manoj Goel', (2022) 11 SCC 705,** to contend that once the parties entered into a settlement, the criminal court ceased to possess jurisdiction to entertain any further proceedings arising therefrom. The said judgment, in the considered opinion of this Court, requires to be appreciated in its proper perspective.

37) In M/s Gimpex Private Limited (supra), the Hon'ble Supreme Court examined the legal effect of a settlement entered into during the pendency of proceedings under Section 138 of the Negotiable Instruments Act. The Court held that once such a settlement is arrived at, the settlement agreement subsumes the original complaint and any breach thereof gives rise to a fresh cause of action attracting such remedies as may be available under law.

38) The aforesaid judgment, however, does not lay down that a criminal court, after finally disposing of the complaint and acquitting the accused, retains an inherent jurisdiction to enforce the terms of the settlement by way of execution proceedings. Equally, it does not hold that the rights flowing from the settlement become extinguished upon disposal of the complaint. The decision merely recognises that breach of the settlement gives rise to an independent cause of action and that the aggrieved party may avail such remedies as are otherwise permissible under law.

39) Thus, the judgment in M/s Gimpex Private Limited (supra) does not support the proposition that the learned Chief Judicial Magistrate retained jurisdiction to enforce the compromise through execution proceedings after finally disposing of the complaint. At the same time, it recognises that the respondent is at liberty to pursue such remedy or remedies as may otherwise be available in law.

40) Thus, the ratio of M/s Gimpex Private Limited (supra) does not advance the case of either party to the extent canvassed before this Court. While it does not support continuation of execution proceedings before a criminal court which has already become *functus officio*, it equally does not foreclose the remedies which may otherwise be available to an aggrieved party on account of the alleged breach of the settlement.

41) Learned counsel for the petitioner has also placed reliance upon the judgments in **'Lalit Kumar Sharma v. State of Uttar Pradesh', (2008) 5 SCC 638,** and **'M/s. Meters and Instruments Private Limited v. Kanchan Mehta', (2018) 1 SCC 560**. Those decisions arose in entirely different factual and legal contexts. Neither of them considers the precise question which arises for determination in the present case, namely, whether a criminal court, after dismissing a complaint under Section 138 of the Negotiable Instruments Act on the basis of a compromise and acquitting the accused, can subsequently entertain execution proceedings in the absence of an executable judicial direction contained in the final order.

42) In view of the discussion made hereinabove, this Court is of the considered opinion that the learned Chief Judicial Magistrate, after dismissing the complaint and acquitting the petitioner vide order dated 26.07.2024, had exhausted the jurisdiction vested in the criminal court in relation to the proceedings under Section 138 of the Negotiable Instruments Act. In the absence of any executable judicial direction contained in the said order, the subsequent execution proceedings culminating in the impugned order dated 06.05.2026 could not have been initiated.

43) Consequently, the impugned execution proceedings cannot be sustained, not because the compromise itself has ceased to exist or become unenforceable, but because the learned Chief Judicial Magistrate lacked jurisdiction to enforce the same after having become *functus officio* upon disposal of the complaint.

44) This Court has consciously refrained from expressing any opinion on the validity of the compromise dated 26.07.2024, the alleged breach thereof, or the respective rights and obligations of the parties arising therefrom. Those questions do not arise for consideration in the present proceedings and are, therefore, left open.

45) It shall, accordingly, be open to the respondent to avail such remedy or remedies as may be otherwise available under law. Any such proceedings, if initiated, shall be considered and decided by the competent forum on their own merits and in accordance with law, without being influenced by any observation made in the present judgment except to the extent of the findings recorded on the issue of jurisdiction of the learned Chief Judicial Magistrate to entertain the impugned execution proceedings.

CONCLUSION:

46) Accordingly, in exercise of the supervisory jurisdiction vested in this Court under Article 227 of the Constitution of India, the petition is partly allowed. The execution proceedings initiated before the Court of the learned Chief Judicial Magistrate, Budgam vide order dated 17.11.2025, together with the consequential order dated 06.05.2026, are hereby quashed.

47) It is, however, clarified that this Court has not expressed any opinion on the validity of the compromise dated 26.07.2024, the alleged breach thereof, or the respective rights and obligations of the parties arising therefrom. The respondent shall be at liberty to avail such remedy or remedies as may be otherwise available under law. All questions relating to the maintainability of such proceedings and the rights of the parties are expressly left open to be determined by the competent forum in accordance with law.

48) The petition stands disposed of in the above terms. Interim direction(s), if any, shall stand vacated. Pending application(s), if any, shall also stand disposed of.

(Wasim Sadiq Nargal)
Judge

Jammu:
09.07.2026
"Nikhil"

- *Whether Judgment is Speaking?* *Yes*
- *Whether Judgment is Reportable?* *Yes*