

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM (M) 164/2020

Reserved on: 01.03.2023

Pronounced on: 12.04.2023

Mohammad Ashraf Wani

... Petitioner/Appellant(s)

Through: Mr. Gulzar Ahmad Bhat, Advocate

V/s

Muzamil Bashir

Through: Mr. S. A. Markoo, Sr. Adv. with Mr. Khursheed Ahmad, Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T

1. The petitioner in the instant petition seeks quashment of order dated 10.8.2020 passed in case titled as "Muzamil Bashir versus Mohammad Ashraf Wani" by the court of Chief Judicial Magistrate, Sopore.
2. The facts those emerge from the petition would reveal that the respondent herein filed on 22.11.2014 three complaints under Negotiable Instrument Act 1881 (for short the Act') against the petitioner on account of bouncing of three cheques claimed to have been issued by the petitioner herein to the respondent herein covering an amount of Rs. 35.50 lakhs in total.
3. During the pendency of the said complaint, the petitioner herein entered into a compromise with the respondent herein agreeing to pay the aforesaid amount of Rs. 35.50 lakhs by the end of June 2015 and consequently executed a settlement/compromise

deed and placed the same before the Magistrate dealing with the complaints.

4. On the basis of the aforesaid compromise, the Magistrate dismissed two complaints bearing no. 9-A/N and 12-A/N acquitting the accused petitioner herein of the charges of section 138 of the Act, however retained the third complaint bearing No. 50/N for further proceedings.
5. The accused petitioner herein appears to have not followed the settlement/compromise by paying the agreed amount to the respondent herein as such the respondent herein approached the Magistrate with an application for the revival of the aforesaid two complaints which had been dismissed in view of the settlement/compromise *supra*. The said application upon being entertained by the Magistrate resulted into issuance of a notice to the accused petitioner herein, followed by a warrant upon his failure to enter appearance, aggrieved whereof the petitioner herein filed OWP 679/2017 under section 104 of the Constitution of Jammu and Kashmir before this Court challenging the proceedings undertaken by the Magistrate for revival of the two dismissed complaints upon application filed with the respondent herein as also the warrant issued against him.
6. The petition *supra* came to be disposed of by this Court on 23.8.2017 quashing the revival application filed by the respondent herein for revival of the dismissed complaints

including the proceedings undertaken thereon, providing an opportunity to the respondent herein to take appropriate remedies against the dismissal of the complaints if so advised.

7. The Magistrate while dealing with the third subsisting complaint proceeded ahead with the same and in the process passed the impugned order observing that since the petitioner and respondent herein had entered into a compromise voluntarily whereunder the accused had undertaken to abide by it accepted the said settlement and disposed of the said third complaint as well, as compromised, but directed the accused petitioner to pay entire amount of Rs. 35.50 lakhs to the complainant respondent herein in terms of the compromise while placing reliance on the provisions of Order XXIII Rule 3 CPC providing further that in case of breach of the order and non-payment of the agreed amount same would be recoverable in terms of section 547 read with section 386 Cr. P. C. In terms of the impugned order, the accused petitioner herein came to be acquitted of the offences under section 138 of the Act discharging the surety from bail and personal bonds.
8. The impugned order *supra* is being questioned by the petitioner herein while invoking extraordinary writ and supervisory jurisdiction of this court on the grounds urged in the petition.

Heard learned counsel for the parties and perused the material on record.

9. The moot point that is urged in the instant petition by the petitioner herein while throwing challenge to the impugned order is the competence and jurisdiction of the Magistrate for having in essence revived the compromise in respect of earlier dismissed complaints while undertaking proceedings in the third complaint.
10. Indisputably, the compromise came to be entered into between the petitioner and the respondent herein and before the same could be administered in all the three complaints, the said compromise failed, as such, it was incumbent upon the Magistrate to have proceeded with the third complaint in accordance with law without taking recourse to the compromise in question, as it is settled position of law relating to the Act of 1881 laid down by the Apex Court in case titled as “**M/S Gimpex Private Limited vs. Manjo Goel reported in 2021 (4) Crimes 196**” wherein it has been held that **once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law.**

Furthermore, the Magistrate also could not have imported the provisions of Order XXIII Rule 3 of the CPC while dealing with the third complaint *supra* as it is also laid down by the Apex court in **M/s Gimpax** *supra* that **the nature of offence under Section 138 of the Act is quasi-criminal, in that, while in arises out of a**

civil wrong, the law however, imposes a criminal penalty in the form of imprisonment or fine. In this view of the position of law the Magistrate could not have relied upon the aforesaid provisions of CPC while dealing with the case of a criminal offence under Section 138 of the Act which proceedings are regulated by the Code of Criminal Procedure.

The Magistrate in view of above the aforesaid legal position seemingly has misdirected in the matter while passing the impugned order and in the process the reliance placed by him upon the judgment of the Apex Court passed in case **R. Vijyan V. Baby (2012) 1 SCC 260** is patently misplaced.

11. For the foregoing reasons, the instant petition succeeds and resultantly the impugned order dated 10.08.2020 is set aside.

It is made clear that nothing hereinabove shall be construed to be expression of any opinion *qua* the compromise/settlement *supra* entered into between the petitioner and the respondent and that the respondent shall be free to initiate any consequential action in civil or criminal law in this regard, if so advised, and if available.

(JAVED IQBAL WANI)
JUDGE

Srinagar
12-04-2023
N Ahmad

Whether the order is reportable: *Yes*