

Serial No. -

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

CRM(M) No.262/2024

Reserved on: 29.07.2026
Pronounced on: 04.08.2026
Uploaded on: 04.08.2026
Whether the operative part or
full judgment is pronounced : **Full**

Kuldeep Raj Sharma,
S/O Badri Nath
R/O H. No. 59-A
Pamposh Colony, Janipur,
Jammu

.....Petitioners

Through: Mr. Pawan Dev Singh, Advocate
Mr. Sandeep Singh, Advocate.

Vs.

Kritipal Sharma
S/O Sh. Yashpal Sharma
R/O Ward No.16,
Mohallah Purani Poonch
Tehsil Haveli, District Poonch

..... Respondents

Through: Mr. Ashish Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner, through the medium of this petition under Section 482 of CrPC, seeks quashing of proceedings in an application seeking to enforce recovery of Rs. 7,00,000/- along with interest @ 7.5 % in terms of agreement, on the basis of which, the complaint No.34/2023 under Section 138 of Negotiable Instruments Act titled 'Kritipal Sharma V. Kuldeep Raj Sharma' was allegedly dismissed, in terms of order dated 22.11.2023 and the subsequent issuance of notice/summons to the petitioner, by virtue of which, the petitioner has been directed to cause his appearance before court of learned Chief Judicial Magistrate (CJM), Poonch.

2. Petitioner pleads that he, as a reputed contractor dealing in supply of construction material, was allotted work for supply of material including chips and sand to GREF at Poonch; that he was approached by one Balram Sharma with the assurance that he would arrange entire material required by the petitioner and demanded advance cheques, which the petitioner agreed and delivered to him for the security purpose; that the petitioner had no direct dealing with the respondent and that he had obtained the construction material from him through his proxy known as Shoki and that the cost of the material supplied by the respondent through that Shoki had been made, however, the advance cheques given to Balram Sharma were never returned; that on the basis of one of the cheques presented to the bank which could not be encashed, the respondent filed a complaint under Section 138 of Negotiable Instruments Act against him before the court of learned CJM Poonch; that the petitioner as accused was compelled at the very beginning to agree to make payment of Rs. 14,00,000/- in two equal installments of Rs. 7,00,000/- each and joint application by the petitioner and respondent was filed before the Trial Court and on that basis the complaint was dismissed by the trial court vide order dated 22.11.2023; that in order to enforce the terms of the agreement, the respondent then filed an application for enforcement of the order dated 22.11.2023 seeking its recovery along with interest @ 7.5%.

3. The petitioner has challenged the proceedings seeking recovery of an amount of Rs.7,00,000/- along with interest, in terms of order dated 22.11.2023 passed by the learned CJM Poonch, on the basis of a compromise reached between the parties, on the grounds that after dismissal of the complaint under Section 138 NI Act, the trial court becomes, *functus officio*, except for the purpose of execution of sentence in terms of the CrPC and the enforcement for the recovery of the amount

of agreement was not amenable to jurisdiction of the trial court; that the trial court lacks jurisdiction to enforce the recovery for dismissal of the complaint; that the agreement between the parties, even if, it is incorporated in the order dismissing the complaint, the same cannot be enforced before the same court; that non performance of an agreement is a civil wrong and can be enforced before the Civil Court under the relevant provision of law, as such, learned CJM Poonch had committed an error, while entertaining application and issuance of notice to the petitioner. It has been finally prayed that the application moved by the respondent for enforcement of recovery, being non-maintainable be dismissed and the proceedings before the court below be quashed.

4. Objections have not been filed by the respondent in the instant petition.

5. Learned counsel for the petitioner, while reiterating the grounds taken in the petition, submits that a complaint was filed by the respondent under Section 138 NI Act, before the court of learned CJM Poonch, against the petitioner in terms of Negotiable Instruments Act on 04.10.2023; that the petitioner-accused, instead of contesting the matter, entered into a compromise with the respondent-complainant to resolve the dispute amicably with an undertaking that the amount of Rs.14,00,000/- shall be paid to the complainant/respondent in two installments, within six months from that date, first installment of Rs.7,00,000/- payable on 22.02.2024 and the second installment on 22.05.2024; that based on the compromise and the statements of the parties recorded by the court below, the learned CJM Poonch vide order dated 22.11.2023 disposed of the complaint 'as compromised' on the same terms of conditions; that after the disposal of the petition, the petitioner was deemed to be acquitted of the charges and the trial court as a Magistrate was not competent to enforce the order, this amount was not

part of the adjudication of the matter by the court so as to enforce the recovery, as a fine, to which the court has resorted to later.

6. He has further argued that after disposal of the complaint under Section 138 NI Act, the trial court becomes, *functus officio*, and cannot restart the proceedings in continuation to earlier proceedings; that the respondent/complainant could seek recovery of the amount agreed to by the petitioner/accused in civil proceedings before a civil court and cannot invoke the criminal jurisdiction vested in the court below; that the proceedings before the court below are misconceived by the respondent/complainant and the court has also committed an illegality in entertaining the proceedings and in issuance of the process against the petitioner/accused. He has finally argued that the application before the court below, for recovery of the amount agreed to between the parties is not maintainable and prayed that the same be quashed. In support of his contention, he has referred and relied upon a judgment dated 09.07.2026 passed by the Coordinate Bench of this court in CM(M) No.193/2026 titled 'Gulla Ganaie @ Gulzar Ahmad Ganaie V. Ghulam Qadir Sheikh', and a judgment of the Hon'ble Supreme Court in M/S Gimpex Private Limited v. Manoj Goel' reported as **(2022) 11 SCC 705** to contend that once the parties entered into a settlement, the criminal court ceases to possess jurisdiction to entertain any further proceedings therefrom.

7. Learned counsel for the respondent, *ex adverso*, argued that it was not a case of dismissal of the complaint or acquittal of the accused/petitioner herein, as such, an order passed, on the basis of a compromise between the parties, can be enforced by the court; that in a complaint filed by respondent under Section 138 of the Negotiable Instruments Act, both the parties entered into a compromise, whereby, the petitioner/accused had undertaken to pay an amount of Rs.14,00,000/- to the

respondent and that the same was agreed to be paid in two equal installments, first, on 22.02.2024 and second on 22.05.2024; that the compromise was reduced into writing, the statements of the parties were recorded by the trial court, placed on record and the complaint was disposed of with the observation that, in case, the accused failed to pay the agreed amount to the complainant, he will be liable to face legal action and that this order would be executable under law. He further argued that the contention and the misplaced reliance on the judgments cited and relied upon was misconceived for the reason that the case had been disposed of, on the basis of the compromise, and the recovery in terms of Section 431 CrPC, read with Section 421 CrPC, was legally permissible. Finally it was prayed that the petition be dismissed.

8. Before appreciating the rival contentions, it will be useful to extract the order dated 22.11.2023, passed by the court below, while disposing of the NI Act complaint, based on mutual agreement by and between the parties, as under:

ORDER

सत्यमेव जयते

“Complainant along with Advocate Manish Sharma present. The accused along with his counsel Advocate Bakshi Gulshan Kumar and Advocate Sanjeev Kumar present. At this stage both the parties moved an application for compromise stating therein that the parties have amicably resolved the dispute that the accused shall pay the amount to the tune of Rs.14,00000/- (Fourteen Lakh) and the complainant filed the complaint to the tune of Rs.10,00000/- against the accused. Now the accused undertakes to pay the amount of Rs.1400000/- (Fourteen Lakh) in two installments within six month from today i.e. rupees 700000/- on 22.02.2024 and rupees 700000/- on 22.05.2024. The compromise agreement has been reduced into writing and signed by the parties which is placed on the file record. In support of the compromise the statements of the parties are recorded and placed in file record. The

complainant and accused have been identified by their respective counsel whole statements have also been recorded and made part of the file. As per above terms, the application for compromise in view of the compromise arrived at in between the parties is allowed and accused is directed to pay Rs.1400000/- to complainant in two installments i.e. rupees 700000/- on 22.02.2024 and rupees 700000/- on 22.05.2024 and in case the accused failed to pay the said amount to complainant, he will be liable to face legal action. However, this order is executable under law. Accordingly complaint is disposed off as compromised. File be consigned to record after its due compilation.”

9. It appears from order passed in complaint No.34/2023 under Section 138 of Negotiable Instruments Act titled ‘Kritipal Sharma V. Kuldeep Raj Sharma’ that both the parties resolved their dispute amicably and placed on record a compromise agreement in writing, wherein, the accused had undertaken to pay an amount of Rs.14,00,000/- into two equal installments on 22.02.2024 and 22.05.2024 to the complainant. The learned CJM Poonch, after taking on record the compromise agreement, recorded the statements of the parties in support of the compromise. As per the terms of the compromise, in case, the accused failed to pay the said amount to the complainant, he will be liable to face legal action. The court, also recorded that this order is, however, executable under law and the complaint was disposed of ‘as compromised’. Section 431 of the CrPC read with Section 421 CrPC has been resorted to by the respondent/complainant, for enforcement of the recovery, as the petitioner/accused had failed to make payment as per the agreed settlement.

10. Both the aforestated provisions for the convenience of understanding the issue, are extracted as under:-

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.

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, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims

made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) *Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.*

11. Provisions of Section 431 CrPC are very clear providing that money ordered to be paid can be recovered as a fine and that any money (other than a fine) payable by virtue of any order made under the Criminal Procedure Code, 1973, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable, as if it were a fine.

12. Hon'ble Apex Court in (2022) 11 SCC 705 referred and relied upon by the learned counsel for the petitioner, in paragraphs 45 and 46, has held:

“45. Based on the discussion above, in our opinion, once the compromise deed dated 12 March 2013 was agreed, the original complaint must be quashed and parties must proceed with the remedies available in law under the settlement agreement.

46. 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.”

A co-ordinate bench of this court, while referring the Supreme Court judgment (supra), vide judgment dated 09.07.2026 passed in CM(M) No. 193/2026, held that on acceptance of the compromise and passing of a final order disposing of the complaint, the criminal proceedings attain finality and the doctrine of *functus officio*, which embodies the settled principle that once a court 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 authorized by law and held that upon passing the order in a complaint under Section 138 NI Act on the basis of a compromise recorded, the criminal proceedings stood concluded and the learned Magistrate became functus officio. As such, 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.

13. It is explicitly clear from both the judgments relied upon, on behalf of the petitioner that once a criminal case/complaint is disposed of, even based on a mutual compromise by and between the parties, it attains finality as the court becomes '*functus officio*', as such, the same cannot be reopened again, at the instance of any of the parties. There cannot be any quarrel to this legal principle as interpreted in both the judgments. The question, however, requires to be addressed as to how, after disposal of a case, on the basis of a mutual compromise, as is the position in the case on hand, providing certain conditions to be performed by the petitioner as an accused. The complaint U/S 138 NI Act was disposed of, on an undertaking by the petitioner/accused to make payment on future dates. Leally speaking, the case once disposed of cannot be reopened, however, the settlement conditions are to be fulfilled, as and on not complying with the settlement, as accepted by the court as well, the aggrieved party as the complainant/respondent in the case on hand cannot be left without any remedy. There being no other specific provision, either in the Negotiable Instruments Act or Criminal Procedure Code, for enforcement of the compromise settlement, provision of Section 431 of CrPC

can be resorted to, to seek recovery of the settled amount, in terms of Section 421 of CrPC.

14. I am fortified, to hold this opinion, in view of the law laid down in the judgments of Karnataka, Delhi and this High Court. The High Court of Karnataka in Writ Petition No.23519 of 2018 titled ‘Somashekara Reddy V. G S Geetha’ in judgment dated 07.02.2020 held that ‘proceedings under Section 138 of NI Act, having been initiated and the compromise arrived at being in nature of compounding the offence, in the event of the terms of compromise involving executory terms, it would be required that it is executed and the terms agreed are enforced in terms of the Criminal Procedure Code, since the proceedings were initiated under the Criminal Procedure Code, more so, when the parties have agreed that on default the complainant can enforce the same in terms of Section 431 of CrPC.

15. A Division Bench of the High Court of Delhi in ‘Dayawati v. Yogesh Kumar Gosain’ reported as **2017 SCC OnLine Del 11032**, while explaining the manner in which the criminal court is required to deal with a settlement arrived at between the parties in proceedings under Section 138 of Negotiable Instruments Act, laid down that: *‘pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as the 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 be recoverable in terms of Section 431 read with Section 421 of the CrPC’*. Hon’ble Delhi High Court in another case reported as **2024:DHC:5699**, ‘Nisha Devi V. Guru Kirpal Singh @ Guddu, in identical facts of a case under Negotiable Instruments Act

having been compromised by way of a written settlement held that: *'such a settlement receives imprimatur or authoritative approval of the court and finally held that in view of settlement in terms of the compromise between the parties, application under Section 421 read with Section 431 CrPC, can be considered by the trial court, in accordance with law'*.

16. A coordinate bench of this court vide order dated 26.12.2025 in a case, titled 'Sajad Ahmad Malik V. Gulzar Ahmad Wani' in CRM(M) No.826/2025 with the identical facts of disposal of a complaint under Section 138 of the Negotiable Instruments Act, based on a compromise, observed that *'the proper course for the learned trial Magistrate should have been to dispose of the complaint in terms of the compromise and thereafter if the petitioner would not have adhered to terms of the compromise, the respondent should have been given liberty to file execution petition on which the learned trial Magistrate could have proceeded against the petitioner by taking resort to provisions contained in Section 421 of CrPC'*.

17. On a keen perusal of the order dated 22.11.2023 passed in a complaint under Section 138 of NI Act for recovery of an amount to the tune of Rs.14,00,000/-, it appears that the learned CJM Poonch, passed a detailed order recording the terms of the agreement which, at the cost of repetition, are stated again that an agreed amount of Rs.14,00,000/- shall be payable in two equal installments of Rs.7,00,000/- each on 22.02.2024 and 22.05.2024 and that if the accused failed to pay the said amount to the complainant, he will be liable to face legal action. Besides recording the conditions of the compromise agreement in the order, the learned CJM also ordered that the order is executable under law and disposed of the complaint 'as compromised'.

18. From the perusal of the order passed by the learned CJM Poonch in the complaint under Section 138 NI Act, it is clear that the court had not only mentioned the terms of agreement but also provided for its execution under law. Since there is no other procedure to be adopted to execute the order, provisions of Section 431 CrPC is the only provision which provides that any money (other than a fine) payable by virtue of any order made under the Criminal Procedure Code 1973 and the method of recovery of which is not otherwise expressly provided for, shall be recoverable, as if it were a fine. The contention of the learned counsel for the petitioner that the civil remedy should have been invoked by the respondent to recover the amount seems to be under wrong notion of an award made on the basis of the compromise by the lok adalat as in case of such award, the Legal Services Authority Act makes a provision that such an award shall be deemed to be civil decree, which can be enforced by a civil court. The Apex court in a case titled 'K. N. Govindan Kutty Menon Versus C. D. Shaji' reported as (2012) 2 SCC 51 held in every Award of the Lok Adalat, in terms of Section 21 of the Legal Services Authorities Act 1987, is a deemed civil court decree, executable by that court. In the case on hand, however, the order passed based on the compromise, was not Lok Adalat award but it was a simpliciter criminal court order, as such, Section 431 CrPC is the appropriate provision to be taken recourse to for recovery of the agreed amount, as per settlement by and between the parties and agreed to by the learned CJM Poonch.

19. In view of the discussion made hereinabove having regard to the interpretation of law by the Apex Court and various High Courts, in the context of a complaint under Section 138 of Negotiable Instruments Act having been

disposed of on the basis of a mutual compromise on amicable settlement, this Court reaches to the inescapable conclusion:

- (i) **That a complaint under Section 138 of NI Act if disposed of on the basis of a compromise reached between the parties before a Lok Adalat, the terms and conditions of the compromise agreement can be enforced as a decree of the Civil Court in terms of Section 21 of the Legal Services Authority Act 1987; and**
- (ii) **That a complaint under Section 138 of NI Act if disposed of on a mutual compromise by the Trial Court itself without reference to the LoK Adalat, the terms and conditions of the agreed compromise can be executed and enforced by resorting to provisions of Section 431 CrPC (now Section 471 of BNSS) for recovery of the amount in terms of Section 421 CrPC (now Section 461 of BNSS).**

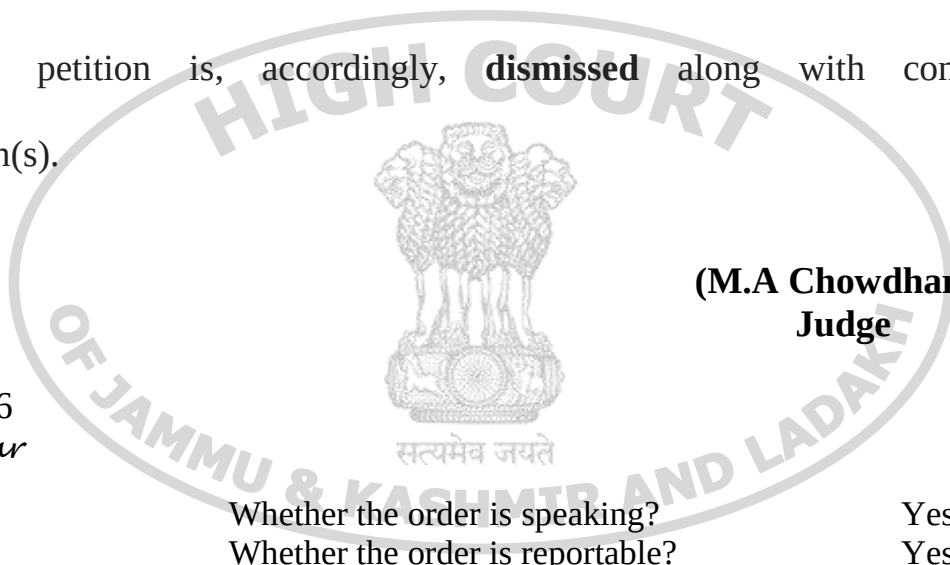
20. In view of the afore-stated proposition of law, the Magistrates dealing with such complaints under the NI Act shall be guided to observe the procedure as stated above and in case, of disposal of the complaint by them on the basis of a mutual compromise, without resorting to the Lok Adalat, the learned Magistrate shall be under an obligation to observe, in the order itself, if the case is not adjourned awaiting execution, that the order shall be executable in terms of the relevant provisions of the CrPC/BNSS so as to not leave any scope of confusion between the parties with regard to the execution of the settled agreement approved by the court, while disposing of the complaint.

21. On the basis of the facts and circumstances of the case and the enunciation of law on the subject by the different high courts, this court, is of the considered opinion that the proceedings initiated for recovery of the amount passed in terms of order dated 22.11.2023 in a complaint under Section 138 NI Act by learned CJM Poonch does not suffer from any illegality, as such, the petition filed by the petitioner to seek quashment of the proceedings is found without any merit and substance and is liable to be rejected.

22. A copy of this judgment is ordered to be circulated to all the Judicial Magistrates of the UTs of J&K and Ladakh, for information and compliance. Learned Registrar General of this Court is requested to circulate the judgment.

23. The petition is, accordingly, **dismissed** along with connected application(s).

Jammu:
04.08.2026
Raj kumar



Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No.