

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

Reserved on: 07.07.2026

Pronounced on: 17.07.2026

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*Whether the operative part or full
judgment is pronounced:* **Full**

Crl R. No.24/2024

ADIL AHMAD SOFI

...PETITIONER(S)

*Through: - Mr. Sheikh Hilal, Advocate, with
Ms. Shaziya Kamal, Advocate.*

Vs.

JAVID AHMAD SOFI

...RESPONDENT(S)

Through: - Mr. Ateeb Kanth, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present revision petition, has challenged judgment dated 28.05.2024 passed by the learned Principal Sessions Judge, Budgam (hereinafter “the Appellate Court”) as also the judgment dated 12.07.2023 passed by the learned Judicial Magistrate 1st Class (Munsiff), Chadoora (hereinafter “the Trial Magistrate). Vide judgment dated 12.07.2023 passed by the learned Trial Magistrate, the petitioner has been convicted of offence under Section 138 of the Negotiable Instruments Act (for short “the N. I. Act”) and he has been sentenced to undergo simple imprisonment of one year along with fine of Rs.19,20,000, which has been directed to be paid to the

respondent as compensation. Vide the impugned judgment dated 28.05.2024, passed by the learned Appellate Court, judgment dated 12.07.2023 passed by the learned Trial Magistrate has been upheld and appeal of the petitioner has been dismissed.

2) It appears that a complaint came to be filed by the respondent against the petitioner alleging commission of offence under Section 138 of the N. I. Act by him. The subject matter of the complaint was a cheque in the amount of Rs.9,60,000/ issued by the petitioner in favour of the respondent as according to the complainant, the said amount was due to him on account of certain business transactions between the parties. The learned Trial Magistrate, after taking cognizance of the offence, issued process against the petitioner, who appeared before the learned Trial Magistrate.

3) On 10.03.2023, the learned Trial Magistrate recorded the plea of the petitioner under Section 251 of the Cr. P. C. In his said statement, the petitioner, while admitting the issuance of the cheque in question in favour of the respondent, stated that there was a business transaction going on between the parties and in this connection, he had handed over two cheques to the respondent as security deposit, out of which one cheque was for an amount of

Rs.9,60,000, whereas the other one was blank. The petitioner further stated that he was not aware that the funds to his credit in his bank account were insufficient. He also stated that during the business transaction, the complainant had invested a sum of Rs.9,60,000, whereas he had invested an amount of Rs.30,40,000. The petitioner/accused finally proceeded to state that as soon as he receives the amount from the complainant, he will liquidate the outstanding liability of the complainant.

4) The record shows that during the pendency of the complaint, petitioner/accused paid an amount of Rs.50,000 to the respondent/complainant and the counsel for the petitioner sought time to repay the balance amount. The learned Trial Magistrate treated the statement of the petitioner recorded under Section 251 of the Cr. P. C as an admission of guilt by him and proceeded to convict him in terms of impugned order dated 12.07.2023. Accordingly, the sentence of imprisonment and fine was imposed upon the petitioner.

5) The petitioner challenged the impugned judgment passed by the learned Trial Magistrate by way of an appeal before the learned Appellate Court. Vide impugned order dated 28.05.2024, the learned Appellate Court proceeded to dismiss the appeal and to uphold the judgment of conviction recorded by the learned Trial Magistrate.

6) The petitioner has challenged the impugned orders by way of present revision petition by contending that he has never pleaded guilty and that there has been no unequivocal admission of guilt on his part. Thus, the learned Trial Magistrate was legally bound to hold trial of the case instead of recording the judgment of conviction against the petitioner. It has further been contended that the learned Trial Magistrate has not followed the procedure prescribed under Section 252 of the Cr. P. C, which is mandatory in nature. It has also been contended that statement of the petitioner recorded under Section 251 of the Cr. P. C has not been properly appreciated by the learned Trial Magistrate.

7) I have heard learned counsel for the parties and perused the impugned orders, the grounds of revision and the trial court record.

8) The main contention of the petitioner is that his statement recorded under Section 251 of the Cr. P. C does not constitute an unequivocal admission of guilt on his part and, therefore, no conviction could have been recorded on the basis of the said statement. Before proceeding to determine the merits of this contention of the petitioner, it would be apt to notice the legal position with regard to recording of plea of guilt of an accused. In this regard, it would be necessary to have a look at the provisions

contained in Sections 251 and 252 of the Cr. P. C, which prescribe the procedure regarding recording of statement of an accused in a summons trial case. The said provisions read as under:

“251. Substance of accusation to be stated.—When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

252. Conviction on plea of guilty.—If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.”

9) From a perusal of Section 251 of the Cr. P. C, it is clear that when an accused appears before a Magistrate, the particulars of the offence of which he is accused have to be stated to him and he has to be asked whether he pleads guilty or he has any defence to make. However, there is no requirement of framing a formal charge. As per Section 252 of the Cr. P. C, if the accused pleads guilty, such plea of the accused has to be recorded by the Magistrate as nearly as possible in the words used by the accused.

10) The Supreme Court has, in the case of **Mahant Kaushalya Das v. State of Madras**, AIR 1966 SC 22, held that requirements of Section 243 of the old Code of Criminal Procedure, which is in *pari-materia* with Section 252 of the Criminal Procedure Code, 1973, are mandatory in character and a violation of these provisions vitiates the trial and

renders the conviction legally invalid. It has been observed by the Supreme Court that the requirement of the said provision is not a mere empty formality, but it is a matter of substance intended to secure proper administration of justice. The Supreme Court emphasized the fact that strict compliance of provisions contained in Section 243 (old Code) is necessary because the right of appeal of the accused depends upon the circumstance whether or not he has pleaded guilty and for this reason, legislature requires that exact words used by the accused in his plea of guilt should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension.

11) This Court has, in the case of **New Raginaya Goods Mart and another v. State**, AIR 1960 J&K 108, held that the accused must admit in clear terms all facts constituting the offence, only then he is liable to be convicted on a plea of guilty

12) Again, in the case of **Waheed Hussain v. Mohammad Farooq Rangrez**, 2006 (I) S. L. J. 155, this Court has held that a Magistrate has to state the particulars of offence alleged in the complaint to the accused and has to ask the accused to show cause why he should not be convicted.

13) In **P. Saravanan v. State** (Crl. R. C(MD) No.354 of 2016 decided on 13.07.2016), Madras High Court has, while

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dealing with the aforesaid aspect of the matter, made the following observations:

“...Further, it is pertinent to note that even in Section 251 of Cr.P.C., it is stated that no formal charge need be framed in a summons case. So, stating to the accused the accusation as against him in a summons case under Section 251 of Cr.P.C. become very important. It is giving an opportunity to the accused to meet the case/accusation as against him, as already stated, it is also a matter of principles of natural justice. It is also in furtherance of rights of the accused. When the accused admit the offence under Sections 251 of Cr.P.C., and under Section 252 of Cr.P.C., the Judge can accept it provided it is unqualified, unambiguous, clear cut and voluntary, otherwise, he can refused to accept the plea, he can direct the prosecution to produce the witness, because as and when an accused admit the offence under Section 251 of Cr.P.C., it is not incumbent upon the Judge to immediately accept the plea. Such a discretion has been given to the trial Court under Section 252 of Cr.P.C. One thing is clear, a reading of the provisions of Section 251 of Cr.P.C., makes it clear that the trial Judge must clearly put to the accused what the accusation as against him, what penal provision of law he is violated, what is the reasons therefor and it gives an opportunity to the accused to put forth his defence, so as to enable the trial Court to appreciate the same and to appreciate his defence in the light of the evidence adduced by the prosecution. A reading of Section 251 of Cr.P.C., will clearly shows that the requirement in Section 251 of Cr.P.C., is mandatory in nature. Not following him will make the very prosecution vitiated. In the summons case, such a strict following of the mandatory provisions of Law which are intended to protect a person, who has been prosecuted for a summons offence become very important, because as per Section 375 of Cr.P.C., no appeal will lie as against conviction recorded based on the plea of the accused. But, notwithstanding the provisions of Section 375 of Cr.P.C., if a conviction recorded and sentence awarded based on the plea of guilty made by the accused is not in accordance with Law and it is in violation of settled principles of Law and the mandatory provisions of law. Then, it is legality, proprietary, regulatory can be questioned under the concurrent revisional jurisdiction of this Court and the High Court under Sections 397 r/w. 401 of Cr.P.C.”

14) From the foregoing analysis of the legal position, it is clear that unless an accused makes an unqualified,

unambiguous, clear and voluntary admission of accusations leveled against him, he cannot be convicted of the offences alleged. It is also clear that before recording the plea of guilt, the accused has to be asked whether he pleads guilty and his plea has to be recorded as nearly as possible in the words used by him. A strict compliance to the provisions contained in Sections 251 and 252 of the Cr. P. C is mandatory. This is so because when an accused is convicted on the basis of his admission of guilt, he does not have a right of appeal. This is clear from a reading of Section 375 of the Cr. P. C. Because valuable right of an accused to file an appeal against the judgment of conviction has been taken away by the legislature, therefore, a Magistrate, before convicting an accused on the basis of his admission, has to be very sure that such admission of the accused is voluntary, unqualified, unambiguous and clear in nature.

15) Turning to the facts of the present case, the petitioner while, recording his statement under Section 251 of Cr. P. C, has stated that there is a business transaction between him and the respondent and in this connection, he deposited two cheques, including the cheque which is subject matter of the complaint, with the respondent as security deposit. The petitioner further went on to state that while he has invested an amount of Rs.30,40,000, in the business, the respondent

has invested an amount of Rs.9,60,000. While concluding his statement, the petitioner stated that he will pay the amount to the respondent, provided he receives his share of the amount from him.

16) From the aforesaid statement of the petitioner, it is clear that he has not admitted the guilt. The only admission which he has made is with regard to issuance of cheque and the signatures appearing on the said cheque. Beyond this, he has not admitted anything. The petitioner has not admitted that there is a legally enforceable debt due to the respondent from him, nor has he admitted that he is going to pay the cheque amount to the respondent unconditionally.

17) A perusal of the statement of the petitioner recorded under Section 251 of the Cr. P. C would reveal that the learned Trial Magistrate has not put all the facts alleged in the complaint which constitute the offence under Section 138 of the N. I. Act to the petitioner. Service of notice of demand upon the accused is an essential ingredient of offence under Section 138 of the N. I. act. The allegations relating to service of notice upon the petitioner have not at all been put to the petitioner while recording his plea under Section 251 of the Cr. P. C. Thus, it can safely be stated that the alleged admission made by the petitioner in his

statement under Section 251 of the Cr. P. C is not unqualified, unambiguous and unconditional. On the basis of such a statement, it was not open to the learned Trial Magistrate to record conviction of the petitioner.

18) Learned counsel for the respondent has submitted that during pendency of the complaint, the petitioner has made payment of Rs.50,000, to the respondent, and that his counsel has also made a statement before the Court to repay the balance amount. Mere payment of Rs.50,000, to the complainant during pendency of the complaint would not form a ground for convicting the petitioner, particularly when he has taken a specific stand in his statement under Section 251 of the Cr. P. C that there is a business transaction between the parties and that they have to settle the accounts, inasmuch as he has to receive some amount from the respondent and in turn he has to pay some amount to him. In the absence of an unqualified and unambiguous admission of guilt by the petitioner/accused, he could not have been convicted of the offence alleged.

19) Coming to the judgment of the learned Appellate Court, it is to be noted that in terms of Section 375 of the Cr. P. C, no appeal is permissible against a conviction recorded on the basis of plea of guilt. Therefore, the learned Appellate Court had no jurisdiction to entertain the appeal filed by the

respondent against the judgment of Trial Magistrate. The impugned order passed by the learned Appellate Court is, therefore, without jurisdiction.

20) For what has been discussed hereinbefore, the impugned order passed by the learned Trial Magistrate, as upheld by the learned Appellate Court, is not sustainable in law and the same deserves to be set aside.

21) Accordingly, the revision petition is allowed and the impugned order passed by the learned Trial Magistrate, as upheld by the learned Appellate Court, is set aside. The matter is remanded to the learned Trial Magistrate with the direction to proceed further in the complaint in accordance with law.

22) A copy of this judgment be sent to the learned Trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

SRINAGAR

17.07.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**