

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 45/2019 CM(1623/2021) CM(6749/2019)

c/w

i) OWP 1407/2018 IA(1/2018)

ii) WP(C) 1741/2019 CM(3287/2019)

Reserved on: 18.12.2024

Pronounced on: 02.01.2025

MUSHTAQ AHMAD BHAT

...Appellant/Petitioner(s)

Through: Mr. Tariq M.Shah, Advocate.

Vs.

Sheeraza Akhter & Ors.

...Respondent(s)

Through: Mr. Kaiser Ali, Advocate.

CORAM:

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

JUDGMENT

1. These are the three connected matters clubbed together and have come up for consideration before this Court. Same are proposed to be disposed of by this common judgment.
2. In essence, the issue involved in all the three petitions revolves around authenticity of a written compromise arrived at between the petitioner-Mushtaq Ahmad Bhat (husband) and respondent No.1- Sheeraza Akhter (wife), which formed the basis for passing of the Award dated 10.02.2018 by the Lok Adalat at Pulwama.
3. Through the medium of one of the connected petition CM(M) No. 45/2019, the petitioner invokes the power of

superintendence of this Court vested under Article 227 of the Constitution of India to assail the order dated 27.07.2019 (impugned herein) passed by the court of learned Sub Judge/Special Mobile Magistrate, Pulwama (Trial court) in File No. 30/Meem titled '*Sheeraza Akhter Vs. Mushtaq Ahmad Bhat*', mainly on the ground that the said order has been passed despite the fact that the award of the Lok Adalat dated 10.02.2018, is the subject matter of challenge in a connected petition OWP No. 147/2018, wherein this Court while issuing notices to the other side has stayed the execution of non-bailable warrants issued against the petitioner, subject to depositing of Rs.25,000/- before the court below, which is stated to have been deposited, but the learned trial court is still proceeding ahead with the execution proceedings and adopting coercive measures for execution of the award dated 10.02.2018 of the Lok Adalat.

4. The petitioner herein is aggrieved of the impugned orders i.e., Lok Adalat Award dated 10.02.2018 and order dated 27.07.2019 passed in an application filed under Order 21 Rule 29 read with Section 151 CPC, in the execution proceedings titled '*Sheeraza Akhter & Ors Vs Mushtaq Ahmed Bhat*' passed by the Trial court, consequent upon which the petitioner herein has been sent to judicial custody by virtue of the order dated 04-11-2019 and released on 08-11-2019 only after an amount of Rs. 50,000/- alongwith two undertakings, sought and furnished from the next friends of the petitioner, came to be submitted before the aforesaid court while the petitioner himself was in judicial

custody in Sub Jail Pulwama as against his consent and knowledge.

5. The brief facts of the case as pleaded are as under:-

- 5.1.** That the petitioner had married with the respondent No.1 and out of the said wedlock two daughters were born, who are respondents 2 and 3 herein and are presently residing with their mother-respondent No.1 at her parental home at Tumchi Nowpora, Pulwama; that soon after the said marriage, respondent No.1 without any reason voluntarily left the company and matrimonial relationship of the petitioner and started living at her parental home alongwith children i.e., respondents 2 and 3; that turning down all the requests to resume the matrimonial relations alongwith efforts of mediation through the intervention of respectable elders of the society and relatives, the respondent No.1 filed a false, frivolous and baseless petition under Section 488 CrPC before the Trial court on 28.04.2015 for grant of maintenance and the court below ordered to pay interim maintenance of an amount of Rs.2000/- in favour of respondent No.1 and Rs.1500/- each in favour of the respondents 2 and 3.
- 5.2.** The petitioner was directed to file objections against the said maintenance petition, which he filed; that during the trial, the said petition came to be disposed of on a reference and compromised in National Lok

Adalat, by virtue of order dated 12.12.2015 wherein the petitioner herein had agreed to pay an amount of Rs.3000/- as arrear of maintenance and an amount of Rs.20,000/- within a week's time, with further direction to visit the respondent No.1(wife) at her parental house in order to take her back with the condition to provide her a separate accommodation; that the said direction was complied with by the petitioner herein, however, without any reason the respondent No.1 denied to receive the cheque and did not return to the matrimonial fold of the petitioner and filed a false and frivolous application seeking execution of the said order dated 12.12.201.

- 5.3.** During the pendency and trial of the execution petition one more petition under Section 488 Cr.PC came to be filed by the respondent No. 1 for herself and on behalf of respondents 2 and 3 against the petitioner and after putting the petitioner herein to notice, objections came to be filed on 12.03.2016 and accordingly the interim order dated 28.04.2016 came to be passed directing the petitioner to pay an amount of Rs.5500/- in favour of the respondents; that by misrepresentation of facts and taking undue advantage of the illiteracy of the petitioner herein, a compromise order of the National Lok Adalat dated 10.02.2018 came to be passed, whereby cumbersome conditions have been laid and the

petitioner herein has been made to pay an amount of Rs.7.00 lacs besides land measuring 10 marlas to the respondents and in addition has been made to pay an amount of Rs.3500/- monthly in favour of respondent Nos. 2 and 3, further the petitioner herein has been directed to divorce the respondent No. 1.

5.4. As against the aforesaid compromise order an execution petition came to be filed by the respondent No.1 which is pending adjudication before the Trial court and non-bailable warrant of arrest dated 14.07.2018 was issued against the petitioner; that the compromise award dated 10.02.2018 has given rise to multiplicity of proceedings thereby causing abuse of due process of law.

- 6.** Heard learned counsel for both the sides at length and considered the matter.
- 7.** Learned counsel for the petitioner while arguing the matter submits that the impugned order alongwith the undertakings are outcome of an alleged illegal award dated 10.02.2018 passed by National Lok Adalat and in case the said award is implemented and enforced same will amount, as an abuse of process of law.
- 8.** Learned counsel further argued that under the garb of the impugned order and undertakings and without deciding the rival execution petitions pending before the court below and by resorting to the remedy of attachment, levy warrant or show cause notice, the subsequent award mentioned above cannot be implemented by straight way sending and detaining the

petitioner herein in judicial lockup which is unknown and illegal in the eyes of law. He further argued that the court below is adamant to get the compromise dated 10.02.2018 implemented by this way or the other as against the procedure established under law. That, once the superior court is seized of the matter, the lower court should stay its hands off and no coercive measures should be taken against the petitioner. He finally prays that the orders impugned alongwith undertakings, being bad in law, may be directed to be set aside and quashed.

9. Learned counsel for the respondents, on the other hand, contended that the petitioner had tried his best to avoid maintenance in favour of the respondents who happens to be his wife and two minor daughters. Learned counsel argued that mere preferring of an appeal does not operate a stay on the decree or order appealed against nor on the proceedings in the court below. He further argued that in case coercive measures are not taken against the petitioner, the respondents shall be subjected to starvation and destitution and the scheme of Section 488 Cr.PC shall be defeated and diluted.
 10. On perusal of the file, it is revealed that Mr. G.M.Yatoo and Mr.G.M.Dar, Advocates, had represented the petitioner and respondent No.1 respectively before the proceedings conducted in the Lok Adalat at Pulwama and this Court vide order dated 09.10.2024 directed both the Advocates to appear before this Court.
 11. Mr. G.M.Yatoo, Advocate, representing the petitioner in the Lok Adalat at Pulwama, in compliance to the directions of this
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Court, appears before this Court and made a clear and categorical statement that the petitioner-Mushtaq Ahmad Bhat was fully aware of the contents of the compromise deed dated 10.02.2018 in terms of its text and context and that he has subscribed his signatures to the Lok Adalat Award representing the petitioner-Mushtaq Ahmad Bhat. This Court, therefore, observed that with the statement of Mr. G.M.Yatoo, Advocate, the petitioner cannot be heard to complain about the text and the context of the compromise deed as well as the Lok Adalat award dated 10.02.2018 passed thereupon.

12. What can be gathered from the pleadings of the case is that the petitioner is trying to distance himself from the contents of the compromise deed, while as his counsel Mr.G.M.Yatoo has confirmed the fact that the petitioner is well aware of the contents of the compromise deed, to which he has been a marginal witness and also as a legal advisor. The petitioner has come forward with the three aforementioned cases in succession before this Court only to hoodwink the proceedings pending before the court below and to avoid payment of maintenance to the respondents, who happens to be his wife and minor daughters.
13. A person approaching a superior court must come with clean hands. He/she should not only suppress any material fact but should not take recourse to the legal proceedings over and over again, which amounts to abuse of the process of law. It is thus, clear that though the petitioner had approached the High Court under Article 227 of the Constitution of India, he had not

candidly stated all the facts to the Court. If there is suppression of material facts on the part of the petitioner or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.

14. Section-21 of the Legal Services Authorities Act, 1987

equates an award of the Lok Adalat to a decree of a Civil Court and imputes an element of finality to an award of compromise passed by the Lok Adalat. When Lok Adalat disposes of the cases in terms of a compromise arrived at between the parties to a suit, after following principles of equity and natural justice, every such award of the Lok Adalat shall be deemed to be a decree of a Civil Court and such decree shall be final and binding upon the parties. **Section 21**, for facilitation, is reproduced hereunder:

“21. Award of Lok Adalat.—

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

15. In *“Pushpa Devi Bhagat (dead) through LR. Sadhna Rai vs. Rajinder Singh and Ors.”* reported as (2006) 5 SCC 566, the Apex Court held that since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the court that passed the same and to prove that the agreement forming the basis for the decree was invalid. It is, therefore, imperative that a party seeking to avoid the terms of a consent decree has to establish before the court that passed the same, that the agreement on which the consent decree is based, is invalid or illegal.

16. This Court is of the considered opinion that the impugned award passed by the National Lok Adalat at Pulwama on reference by the court of learned Magistrate, having been passed in view of the amicable settlement between the parties, who had not only acknowledged their presence by putting their signatures but were also identified by their respective counsels; one of whom being the counsel for the petitioner herein had stated before this Court that the petitioner had voluntarily entered into a compromise before the National Lok Adalat, which culminated into passing of the impugned award. Therefore, any challenge on this count to the impugned award fails. Learned Magistrate, in the execution proceedings, had proceeded to execute the award, reached between the parties before the National Lok Adalat and the petitioner had failed to show any reason as to how any of the proceedings including

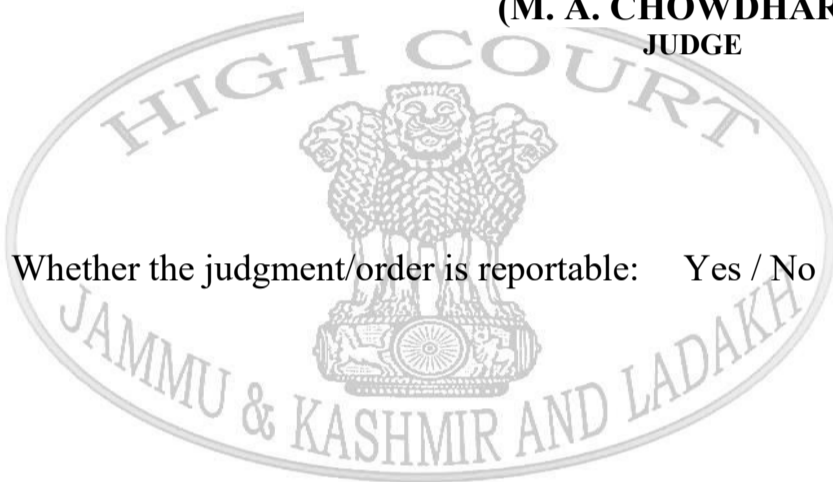
issuance of warrant or detaining him in default of payment of the amount of compensation, was illegal in any manner.

17. Viewed thus, all the aforementioned connected petitions, being devoid of merit and substance, fails and are **dismissed** accordingly.

18. Interim direction, if any passed, shall stand vacated.

(M. A. CHOWDHARY)
JUDGE

Srinagar
02.01.2025
Muzammil. Q



Whether the judgment/order is reportable: Yes / No