

Serial No. 38
Regular Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2632/2022
CM(6650/2022).

SYED TAJAMUL BASHIR.

...Petitioner(s)

Through: Mr. Lone Altaf, Advocate.

VERSUS

FAROOQ AHMAD LONE.

...Respondent(s)

Through: None.

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

ORDER
30-12-2024

01. The petitioner has challenged Award dated 17.07.2019 passed by the Lok Adalat organized by Tehsil Legal Services Committee, Tangmarg whereunder the petitioner has undertaken to pay an amount of Rs. 1.50 lacs to the respondent.

02. No one has been appearing on behalf of the respondent in this case for quite some time. Accordingly, the respondent is set ex-parte.

03. Heard learned counsel for the petitioner and perused the record of the case including the record of the Lok Adalat/trial court.

04. It appears that the respondent had filed a compliant against the petitioner for commission of offence under Section 138 of the Negotiable Instruments Act alleging therein that two cheques one for Rs. 4,50,000 (Four Lacs Fifty Thousand) and another for Rs. 50,000/- (Fifty Thousand) issued by the

petitioner in favour of the respondent/complainant were dis-honored and when the Notice of Demand was served upon the petitioner he did not liquidate the cheque amount. The learned trial court vide its order dated 01.08.2017, issued process against the petitioner whereafter he appeared before the trial court on 10.10.2017. On the said date, his plea was recorded and he denied the allegations. Accordingly, the complainant was asked to lead evidence in support of his case.

05. It seems that during the trial of the case, petitioner/accused did not appear before the trial court. On 26.06.2019, as a result whereof non-bailable warrants of arrest were issued against him and the case was posted to 17.07.2019. On the said date, the matter was referred to the Lok Adalat and a settlement came to be recorded by the Lok Adalat whereby it was provided that the petitioner has undertaken to pay an amount of Rs. 1,50,000/- to the respondent and that he has agreed to pay first installment of Rs. 50,000/- on 01.10.2019 and to pay the balance amount in installments on every first day of succeeding month till the realization of the full amount of Rs. 1,50,000/- which was to be deposited in the Bank account particulars whereof were given in the settlement. It was also provided in the said settlement that in case the petitioner/accused fails to pay the aforesaid installments, the respondent/complainant shall be at liberty to execute the whole cheque amount i.e. Rs. 5.00 lacs. The settlement is purported to be signed by the parties and their counsels as also by the members of the Lok Adalat.

06. The contention of the petitioner is that the award was passed at his back and that he did not have any knowledge about the same. It has been contended that petitioner's signature and thumb impression on the impugned award are forged and the award has been passed fraudulently. It has been

contended that neither the petitioner nor his counsel was present when the impugned award was passed.

07. A look at the record of the trial court would show that on 17.7.2019 when the petitioner appeared before the said court, he executed a Vakalat Nama in favour of Advocate Shri. Yaqoob Hussain and the same was taken on record by the trial court. A comparison of the signatures of the petitioner/accused appearing on the said Vakalat Nama with the signature of the petitioner/accused appearing on the statement recorded under Section 242 of the Cr.PC shows that the same are matching. The signature of the petitioner appearing in the Affidavit annexed to the present petition are also matching with his signatures appearing on his statement recorded under Section 242 of the Cr.PC as also with his signatures appearing on Vakalat Nama executed by him in favour of the aforementioned Advocate. However, strangely enough the purported signatures of the petitioner and his counsel appearing on the settlement recorded in award dated 17.07.2019 are not matching with his aforesaid signatures even to the naked eye. This clearly establishes the contention of the petitioner that he has not signed the settlement. Even the signature of his counsel are not matching with the signature of the counsel for accused appearing in the Award settlement.

08. It is a settled law that a settlement arrived at between the parties is to be reduced into writing and the same has to be signed by the parties or by their duly authorized agents/counsels. Unless the same is done, it cannot be stated that a legally enforceable settlement has been reached between the parties. In the present case, as already stated, the contention of the petitioner that he did not sign the settlement nor did his counsel sign the same gets substantiated from a perusal

of the record of the trial court. Therefore, the settlement recorded by the Lok Adalat by way of the impugned award is no settlement in the eyes of law.

09. For the foregoing reasons, the impugned award dated 17.07.2019 passed by the Lok Adalat organized by the Tehsil Legal Services Committee, Tangmarg is not sustainable in law. This, however, gives rise to another issue which is required to be addressed. The Lok Adalat which passed the impugned award was presided over by a Judicial Officer and an Advocate. Having regard to the observations made hereinbefore both of them owe an explanation to the Court for the manner in which they have recorded the settlement.

10. Accordingly, while setting aside the impugned award dated 17.07.2024, passed by the Lok Adalat, it is directed that an explanation shall be called by the Registrar General from the concerned Judicial Officer and the Advocate who were members of the Lok Adalat for explaining their conduct. The response shall be placed before this Court for further directions. The learned trial Magistrate shall proceed further in the matter in accordance with the law from the stage that was reached prior to the impugned settlement.

11. The petition shall stand disposed of but for the purpose of considering the explanation of the Judicial Officer and the Advocate concerned, the matter be placed before this Court on 10.03.2025..

(Sanjay Dhar)
Judge

SRINAGAR
30-12-2024
Showkat Khan