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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM (M) No. 274/2024

CrIM No. 683/2024

Parvaiz Ahmad Wagay

..... Petitioner (s)

Through: Mr. Umar Mir, Adv.

V/s

Mohammad Altaf Wani

..... Respondent(s)

Through: Ms. Masooda Jan, Adv.

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge.

ORDER

29.05.2024

1. The petitioner has challenged order dated 25.04.2024 passed by the learned Additional Special Mobile Magistrate, Shopian whereby in an execution petition relating to the award dated 08.12.2018 passed by the Lok Adalat, the petitioner has been declared as proclaimed offender.
2. Issue notice to the respondent.
3. Ms. Masooda Jan, Advocate enters appearance and accepts notice on behalf of the respondent
4. Heard and considered.
5. It appears that the respondent had filed complaint against the petitioner before the learned trial Magistrate alleging commission of offence under Section 138 of Negotiable Instrument Act. The said complaint came to be settled before the Lok Adalat on 08.12.2018

and undertook to clear the liability of the petitioner had admitted his liability to pay an amount of Rs. 2,73,7000/- within six months in monthly installment of Rs. 4,56,166/- each. The respondent, however, had agreed to waive off an amount of Rs. 4.00 lacs. Accordingly the Lok Adalat passed the award in terms of the settlement.

6. It seems that the respondent filed execution petition before the learned trial Magistrate seeking execution of the award dated 08.12.2018. It also appears that the petitioner herein stopped appearing in the execution proceedings which persuaded the learned trial Magistrate to pass the impugned order whereby the petitioner was declared as proclaimed offender and his movable and immovable property were directed to be attached. In addition to this, general warrants of arrest have also been issued against the petitioner.

7. The law in the subject is well settled that every award made by the Lok Adalat is deemed to be a decree of the civil court. Therefore the procedure for execution of award of the Lok Adalat even in a proceeding under Section 138 of the Negotiable Instrument Act is to be governed by the provisions contained in Code of Civil Procedure relating to the execution of the decrees of civil court. In my aforesaid view, I am supported by judgment of this Court in case titled *Mohammad Aslam Sheikh Vs. Mohammad Ranzan Bhat* passed in CRMC No. 50/2018 decided on 18.09.2020.

8. The learned trial Magistrate while passing the impugned order has taken recourse to provisions contained in CrPC and that too to those provisions which relate to compelling of appearance of the accused. The procedure adopted by the learned trial Magistrate in the instant case is not in accordance with law. Therefore the impugned order passed by the learned trial Magistrate deserves to be set aside.
9. Accordingly the impugned order passed by the learned trial Magistrate is set aside and it is left open to the learned trial court to take necessary steps for execution of the award of the Lok Adalat in the instant case in accordance with the provisions contained in Order 21 of the CPC
10. Disposed of as above.
11. Copy of this order be sent to the learned trial court.

(Sanjay Dhar)
Judge

SRINAGAR
29.05.2024
Aasif

Whether the order is speaking Yes/No.

Whether the order is reportable Yes/No