

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

Case:- CRM(M) No. 953/2023
CrIM No. 1893/2023

Iftikar Ahmad, Age 40 Yrs.Appellant(s)/Petitioner(s)
S/o Late Mohd Akram,
R/o Yurtung, Leh,
U.T. of Ladakh.

Through: Mr. Sumant Sudan, Advocate.

Vs

Abdul Majeed,
S/o Ghulam Mohd. Batt,
R/o Abli Masri, Tehsil Gundna,
District Doda.

..... Respondent(s)

Through: Mr. F. A. Natnoo, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(29.01.2024)

(ORAL)

01. Inherent power of this Court is being invoked by the petitioner herein for seeking quashment of complaint titled as "**Abdul Majeed Vs Iftikar Ahmed**" (for short "**the impugned complaint**") filed by the respondent herein against the petitioner herein under section 138 read with section 142 of the Negotiable Instruments Act, 1881 (for short "**Act of 1881**") along with order dated 15.03.2023 (for short "**the impugned order**") passed therein by the

Additional Special Mobile Magistrate, Doda (for short “***the Magistrate***”).

- 02.** Before proceeding to address to the issue raised in the petition in hand, facts of the case reveal that the respondent herein instituted the impugned complaint against the petitioner herein on the premise that the accused-petitioner herein engaged his services for demolition and construction of his old house situated at Yurtung, Leh and upon execution and completion of the said work, the accused-petitioner herein became liable to pay to the complainant-respondent herein an amount of Rs. 9,90,240/- against which an amount of Rs. 3,54,399/- came to be paid by the accused-petitioner to the complainant-respondent herein with a promise to pay the rest of the outstanding amount of Rs. 6,35,841/- and in furtherance thereof issued a cheque in favour of the complainant-respondent herein for an amount of Rs. 1,00,000/- being cheque no. 386539 dated 15.11.2022 of Punjab National Bank, Leh relating to the account of the accused-petitioner bearing no. 22554011000259 and upon presentation of the said cheque for encashment in his bank being J&K Bank Limited, Branch Doda by the complainant-respondent, same came to be dishonored on account of “insufficient funds” with a memo dated 12.12.2022 whereupon the complainant-respondent herein issued and served a demand notice dated 05.01.2023 through his advocate upon the accused-petitioner requiring him to

make the payment of the amount of cheque within the stipulated period of 15 days, whereupon the failure of the accused-petitioner herein the complainant-respondent instituted the impugned complaint.

- 03.** Upon presentation of the impugned complaint before the Magistrate on 09.02.2023, the Magistrate after recording the statement of the complainant as also one of his witnesses, namely, Nazir Ahmed and upon considering the said complaint along with the material appended thereto in terms of the impugned order dated 09.02.2023 took cognizance and consequently summoned the accused-petitioner.
- 04.** The accused-petitioner herein has maintained the instant petition on multiple grounds including that the impugned complaint could not have been entertained by the Magistrate, in that, the Magistrate lacked jurisdiction as also that the institution of the impugned complaint by the respondent-complainant is an abuse of process of law, despite a settlement having been arrived at by the complainant-respondent herein with the accused-petitioner.

Heard learned counsel for the parties and perused the record.

- 05.** Law is settled that the inherent power vested in this Court under section 482 Cr.P.C. is neither revisional nor appealable in character and the power has to be exercised

rarely and in exceptional cases, in that in exercise of such power, the High Court is not required to embark upon the appreciation of evidence for quashing the proceedings and even the expressions “abuse of process of law” or “to secure the ends of justice” have been held by the Apex Court not conferring an unlimited jurisdiction in the High Court besides holding that if factual foundation for offence has been laid down in the complaint, the High Court should not hasten to quash proceedings merely on the premise that one or two ingredients have not been stated therein.

- 06.** Keeping in mind the aforesaid position of law and reverting back to the case in hand, a closure examination of the impugned complaint would manifestly tend to show that the complainant-respondent herein has specifically and in explicit terms alleged the dishonor of cheque-in-question issued by the accused-petitioner herein in his favour *qua* the amount, the accused-petitioner herein was supposed to pay to him on account of execution of the construction of the residential house of the accused-petitioner. It also gets revealed from the impugned complaint that the complainant has complied with the requirements as are envisaged under the Act of 1881 before proceeding to institute the impugned complaint. It transpires that the respondent herein has laid a solid factual foundation *qua* the offence alleged to have been committed by the accused-petitioner in the complaint for setting law into motion and thus the maintainability of the impugned complaint

questioned by the accused-petitioner in the instant petition is not legally sustainable.

Insofar as the challenge thrown to the impugned order passed by the Magistrate dated 09.02.2023 is concerned, a bare perusal of the same manifestly reveals that the Magistrate has been alive to the facts and circumstances of the case and has rightly and validly passed the impugned order with complete application of mind, as such, the Magistrate cannot be said to have faulted in the matter, as such, the challenge thrown to the impugned order as well is not legally tenable.

07. Viewed thus, in the light of the aforesaid facts and circumstances and the legal position, this Court is not inclined to exercise inherent power in the matter. Resultantly, the petition fails and is, accordingly, **dismissed.**

It is made clear that any observation made hereinabove *qua* the impugned complaint be deemed to have been expressed only for the purpose of the determination of the instant petition and shall in no case deemed to be expression of any opinion *qua* the matter pending before the Magistrate.

08. At this stage the learned counsel for the petitioner would submit that this Court in terms of order dated 08.11.2023 stayed the proceedings in the complaint pending before the Magistrate subject to the depositing of an amount of Rs. 1,00,000/- by the petitioner before the Registry and in

compliance thereof the petitioner has deposited the said amount before the Registry. The learned counsel for the petitioner in view of *disposal* of the petition, thus, would pray for release of the said amount in favour of the petitioner along with the interest, if any, accrued thereon.

In view of the above, the Registry is directed to release the amount of Rs. 1,00,000/- claimed to have been deposited by the petitioner in terms of order dated 08.11.2023 in his favour upon his proper verification and identification by his counsel along with the interest that may have accrued thereon.

Disposed of.



**(JAVED IQBAL WANI)
JUDGE**

**JAMMU
29.01.2024**

Bunty

Whether the order is speaking: Yes

Whether the order is reportable: Yes