

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1112 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE M. K. THAKKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	Yes

=====

SATISHBHAI SHANTILAL MEHTA
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

MR.DEVANSH KAKKAD FOR MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1

MR.MONARCH PANDYA FOR MR AADITYA P DAVE(11461) for the Opponent(s)/Respondent(s) No. 2

MR PM DAVE(263) for the Opponent(s)/Respondent(s) No. 2

MS.M.H.BHATT, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER**Date : 12/09/2024****ORAL JUDGMENT**

1. This appeal is filed challenging the judgment and order

of acquittal passed by the learned Magistrate while sitting in Lok Adalat jurisdiction on 08.09.2018 in Criminal Case No.1649 of 2013 dismissing the complaint for non-prosecution.

2. It is the case of the complainant that on demand of respondent-accused, complainant had lent the amount of Rs.10,00,000/- to the respondent-accused and for repayment of the cheque which was issued in favour of the complainant on 12.10.2012 being cheque No.057757 was dishonoured with an endorsement of "funds insufficient". On following due procedure under the N.I.Act, complaint came to be filed by the complainant before the Additional Chief Judicial Magistrate, Rajkot being Criminal Case No.1649 of 2013 and on recording the verification the summons came to be issued by the learned trial court on 03.06.2015. Learned trial court, thereafter, has dismissed the complaint while sitting in a special sitting on 08.09.2018 recording the absence of the complainant which is subject matter of challenge before this Court.
3. Heard learned advocate Mr.Devansh Kakkad for the applicant and learned advocate Mr.Monarch Pandya for

the respondent.

- 3.1. Learned advocate Mr.Devansh Kakkad submits that there was no notice issued by the learned trial court at the time of referring the Criminal Case before Lok Adalat and as there was no settlement, the Lok Adalat would not have any jurisdiction to dismiss the complaint for non-prosecution while recording the absence. Learned advocate Mr.Devansh Kakkad submits that as per section 19 and 20 of the Legal Service Authorities Act, 1987, in the event when the matter is not settled between the parties, the Court would not have jurisdiction except to return the case to the regular court for deciding the same on merits. Learned advocate Mr.Devansh Kakkad submits that the impugned judgment and order of the acquittal which was passed is without jurisdiction and therefore, same be set aside and appeal be allowed.
4. On the other hand, learned advocate Mr.Monarch Pandya has vehemently opposed this application and submitted that alongwith the cases where settlement is arrived Lok Adalat would have jurisdiction to dispose of the petty cases which remained as a dead wood. As the

complainant did not appear before the learned trial court for a long time and therefore, learned trial court has considered the same as a dead wood case and was referred to the Lok Adalat where complaint was dismissed. Learned advocate Mr.Monarch Pandya submits that it is true that Lok Adalat would not have powers to dismiss the complaints on merits but when the complainant did not appear before the Court, therefore, the dismissal of complaint for non-prosecution cannot be said that it was ordered on merits. Learned advocate Mr.Monarch Pandya has relied paragraphs 14 to 16 of the order of this Court in Criminal Appeal No.696 of 2023 wherein, it is observed that:

“14. Normally, the National Lok Adalat are organized for the subject matters as prescribed under the Legal Service Authorities Act, 1987, with National Legal Service Authorities (Lok Adalat) Regulations, 2009 in Courts and Tribunals. The category of pre- litigation matters includes the cases falling under Section 138 of the N.I. Act., even the category of the matters pending in the courts and tribunals, which can be disposed under the Lok Adalat includes the cases arising out of Section138 of the N.I. Act. Having recognized the cases of subject matters, the present case arising out of Section 138 of the N.I. Act

can also be considered in the special sitting of Magistrate for its disposal.

15. It would be relevant to note that NALSA has requested Legal Service Authorities to organize special sittings of Magistrates for disposal of petty cases, which also includes deadwood cases. One of such instruction issued by NALSA dated 06.12.2014, goes to indicate that the deadwood cases as may be identified, can be placed in the special sitting of Lok Adalat. Ultimately, the object of holding the special sitting is to dispose of the cases through process of arbitration and settlement between the parties. In a way reducing the burden of arrears of work in regular courts and to render justice at the doorsteps of the poor and the needy and to make the justice quicker and less expensive.

16. In light of the aforesaid position, the court finds that the order was passed by the learned Chief Judicial Magistrate on 11.02.2023, it was a special sitting fixed for conducting the cases to be placed before the Lok Adalat. On perusal of the impugned order, the learned Magistrate in the operative part of the order, has mentioned that the order of dismissal for default has been passed as special sitting Magistrate on the ground of non-prosecution pronounced in the open court on 11.02.2023.”

4.1. Learned advocate Mr.Monarch Pandya submits that in view of the above decisions the learned trial court has

rightly dismissed the complaint while sitting in the Lok Adalat, therefore, no interference is required and appeal is required to be dismissed.

5. Considering the submissions made by the learned advocates for the respective parties as well as perusing the record and proceedings it transpires that on filing the criminal case, summons was issued by the learned trial court on 03.06.2015. Thereafter, the accused appeared before the learned trial court and his plea came to be recorded below Exh.15 on 30.06.2015. The record shows that case was posted thereafter for the evidence of the complainant and on certain occasions absence of the complainant is recorded, however, it transpires that there was no continuous absence of complainant and his advocate appears to have remained present on almost every occasion. Thereafter, it was referred to the Lok Adalat by the learned trial court, however, record does not indicate any notice which was issued by the learned trial court by referring the matter to Lok Adalat. In addition to that, learned trial court has dismissed the complaint on 08.09.2018 while sitting in the Lok Adalat jurisdiction.

6. At this stage, section 19 to 21 of the Legal Service Authority Act, 1987 is required to be referred:

19. Organisation of Lok Adalats—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before,

any Court for which the Lok Adalat is organised: Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

20. Cognizance of cases by Lok Adalats.—I. *Where in any case referred to in clause (i) of sub-section (5) of section 19— (i) (a) the parties thereof agree; or (b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties. (2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party. (3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. (4) Every Lok Adalat shall, while determining any reference before it*

under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles. (5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law. (6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court. (7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section

(1).21. Award of Lok Adalat.—1 [(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.

7. Section 19(5) provides that Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect

of any case pending before or any matter falling within the jurisdiction of and is not brought before any court for which Lok Adalat is organized.

7.1. Section 20 provides that cases are to be referred to the Lok Adalat where the parties are agreed or one of parties would make an application to the court and proviso of section 20/1 provides that no case shall be referred to the Lok Adalat under sub clause (b) of clause 1 and clause 2 by such court except after giving the reasonable opportunity to the parties of being heard. Section 20(5) also provides that where no award can be passed by the Lok Adalat when no compromise or settlement was not arrived between the parties, the record of the case shall be returned by it to the court from which the reference has been received for disposal in accordance with law.

7.2. Looking to the decision of this Court relied by the learned advocate Mr.Pandya, where it is held that dead wood case can be put an end to whilse in the special sitting of Lok Adalat this Court is of the view that it may be a short cut to dispose of the matter by snap judgment but the same is not in accordance with law. As the Legal

Service Authority Act, 1987 prohibits the learned court to disposing of the case where no settlement has arrived adopting the mode in the Lok Adalat while in a special sitting is contrary to the provisions of the Legal Service Authority Act, 1987.

7.3. This Court has also considered the decision which was relied by the learned advocate Mr.Monarch Pandya as well as the decision rendered by this Court in Criminal Appeal No. 1888 of 2018, Criminal Appeal No. 789 of 2022, Criminal Appeal No. 424 of 2018, Criminal Appeal No. 557 of 2024 and Criminal Appeal No. 465 of 2022, where it is held that in absence of any settlement or compromise arrived between the parties the only option available to the Member of the Lok Adalat was to return back the papers to the concerned court for disposal in accordance with law and the Lok Adalat would not have jurisdiction to adjudicate the matter on merits.

7.4. This Court has also considered the decision of the Apex Court in the case of **Estate Officer Vs. Colonel H.V.Mankotia reported in (2022) 12 SCC 609** wherein, it is held that

7.1 As per sub-section (5) of Section 19, a Lok Adalat shall

have jurisdiction to determine and to arrive at a compromise or a settlement between the parties to a dispute in respect of (i) any case pending before; or (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised. As per sub-section (1) of Section 20 where in any case referred to in clause (i) of sub-section (5) of Section 19- (i) (a) the parties thereof agree; or (i) (b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement or (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat. It further provides that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

7.2 As per sub-section (3) of Section 20 where any case is referred to a Lok Adalat under sub-section (1) or where a reference is made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. Sub-section (5) of Section 20 further provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

8. Thus, a fair reading of the aforesaid provisions of the Legal Services Authorities Act, 1987 makes it clear that the

jurisdiction of the Lok Adalat would be to determine and to arrive at a compromise or a settlement between the parties to a dispute and once the aforesaid settlement / compromise fails and no compromise or settlement could be arrived at between the parties, the Lok Adalat has to return the case to the Court from which the reference has been received for disposal in accordance with law and in any case, the Lok Adalat has no jurisdiction at all to decide the matter on merits once it is found that compromise or settlement could not be arrived at between the parties.

9. Identical question came to be considered by this Court in the case of State of Punjab and Ors. Vs. Ganpat Raj (supra) and after considering Section 20 of the Act, 1987, it is observed and held in paragraph 7 as under:-

“7. The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are “compromise” and “settlement”. The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Termes de la Ley, “compromise is a mutual promise of two or more parties that are at controversy”. As per Bouvier it is “an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon”. The word “compromise” implies some element of accommodation on each side. It is not apt to describe total surrender. (See NFU Development Trust

Ltd., Re [(1973) 1 All ER 135 : (1972) 1 WLR 1548 (Ch D)]). A compromise is always bilateral and means mutual adjustment. “Settlement” is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of Civil Writ Petition No. 943 of 2000 filed by the respondent is clearly impermissible.”

10. In view of the above, the impugned order passed by the Lok Adalat dismissing the writ petition on merits is unsustainable and deserves to be quashed and set aside. The submission made by the learned counsel appearing on behalf of the respondent that once the matter was placed before the Lok Adalat with consent, thereafter the entire matter is at large before the Lok Adalat and, therefore, the Lok Adalat is justified in disposing the matter on merits has no substance and the same is required to be rejected outright. The consent to place the matter before the Lok Adalat was to arrive at a settlement and or a compromise between the parties and not for placing the matter before the Lok Adalat for deciding the matter on merits. Once there is no compromise and/or a settlement between the parties before the Lok Adalat, as provided in subsection (5) of Section 20, the matter has to be returned to the Court from where the matter was referred to Lok Adalat for deciding the matter on merits by the court concerned.”

8. Considering all the decisions referred herein above it appears that the matters which are referred to the Lok

Adalat for disposal where settlement or compromise arrived between the parties, however, in the event when compromise is not arrived, then it should be referred to the court as provided under Section 20(5) of the Legal Service Authority Act, for disposal in accordance with law. The work of Lok Adalat is only to dispose of the case where the settlement is arrived and as in the instant case there is no settlement arrived between the parties and matter was disposed of by the learned court while sitting in Lok Adalat by exercising the power under section 256 of Cr.P.C., the impugned order is without jurisdiction and therefore, this Court is of the view that the same is required to be set aside and criminal case is required to be restored to its original file for deciding the same on its merits.

9. Resultantly, this appeal is allowed.
10. The judgment and order of the learned trial court dated 08.09.2018 in Criminal Case No.1649 of 2013 is hereby set aside. The Criminal Case No.1649 of 2013 is ordered to be restored to its original file.
11. As the case is pending since 2013 learned trial court is directed to dispose of the same, as expeditiously as

possible, preferably within a period of eight months from the date of this order, after providing reasonable opportunity to the parties to adduce their evidence.

ARCHANA S. PILLAI

(M. K. THAKKER,J)