

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Crl R No. 37/2025
CrIM No. 1263/2025

MOHAMMAD SHAFI BHAT

...Petitioner/Appellant(s)

Through: Mr. Abid Zahoor Andrabi, Advocate

Vs.

BILAL AHMAD BHAT

...Respondent(s)

Through: Mr. Parvaiz Nazir, Advocate

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

01.09.2025

1. Mr. Parvaiz Nazir, learned counsel appears and accepts notice on behalf of the respondent.
2. Heard learned counsel for both the parties for a considerable period.
3. Respondent filed a complaint in terms of the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act' for short) against the petitioner/appellant/accused, which came to be tried by the Court of learned Judicial Magistrate Judge, Small causes, Srinagar (hereinafter referred to as the 'Trial Magistrate' for short). That the respondent/complainant led his evidence at the proceedings of the complaint and in the meantime, the petitioner/appellant was detained in pursuance of an order passed under the Public Safety Act and lodged at Kot-Balwal Jail, Jammu.

The petitioner/accused used to appear virtually at the proceedings from the place of his lodgment. The petitioner as alleged by him, lost contact with his counsel and the case came to be taken up for hearing by the learned Trial Magistrate allegedly on day to day basis as the respondent is a Judicial Employee and then posted as Section Officer at District Court Complex Srinagar. That as alleged by the petitioner, he was not given ample opportunity to lead evidence in his defense. As alleged, one sided judgment was passed by the learned Trial Magistrate on 30-05-2023, whereby the petitioner was convicted under Section 138 of the Act and sentenced to undergo a simple imprisonment for a period of one year and the payment of fine and compensation respectively amounting to $1\frac{1}{2}$ of cheque amount and Rs. 3 lakhs. The preventive detention of petitioner/appellant came to be quashed by this Court on 30-05-2023. The petitioner then impugned the order of conviction and sentence in an appeal before the learned Principal Sessions Judge, Srinagar (hereinafter referred to as the 'Appellate Court' for short). The Appellate Court upon admitting the appeal ordered the suspension of the sentence subject to payment of 20% of the fine amount, which the petitioner/appellant failed to deposit resulting in the initiation of the execution of the sentence already passed. It is also alleged by the petitioner/appellant that the learned Trial Magistrate during the proceedings before him recalled one of the witnesses of the respondent/complainant-a Bank Manager at his back and without issuing any notice to him to whom he could not cross-examine. The petitioner/appellant underwent a

simple imprisonment of one year with effect from 16-09-2023 up to 18-09-2024 in the Central Jail, Srinagar. The appeal came to be decided by the learned Appellate Court about 10 months after the release of petitioner on 02-08-2025.

4. The learned Appellate Court although set aside the order of conviction and sentence yet observed that no case is made out for acquittal of the petitioner/appellant. The learned Appellate Court while invoking its powers in terms of provisions of Section 386 of the Code of Criminal Procedure remanded the complaint back to the learned Trial Magistrate for retrial of the petitioner/accused. It was directed by the learned Appellate Court that the learned Trial Magistrate shall retry the accused from the stage, the respondent's witness Bank Manager was recalled. The learned Trial Magistrate was also directed by the learned Appellate Court to provide the petitioner/accused adequate opportunity to cross-examine the concerned Bank Manager about his statement, he has deposed by way of his re-examination. Learned Appellate Court further directed that the petitioner/accused shall again be examined under Section 313 of the Code regarding any incriminating circumstances appearing against him in the second statement of the said witness Bank Manager, whereafter he shall be provided adequate opportunity to adduce his evidence in witness. The learned Trial Magistrate was also directed to expedite the retrial of the complaint so as to conclude the same preferably within a period of two months from the date the parties will appear before it.

5. Through the medium of the instant petition, the petitioner/accused seeks the setting aside/quashment of the Appellate Court order dated 02-08-2025 on the ground that same does not bear any finding as regards the sentence of one year simple imprisonment already undergone by him with effect from 16-09-2023 up to 18-09-2024. He has also sought for awarding of compensation in his favour for allegedly spending one year in the Central Jail illegally.
6. I have heard the learned counsel for the parties and considered their submissions.
7. In the facts and circumstances of the case, there appears to be no illegality, incorrectness or impropriety in the impugned order dated 02-08-2025 of the learned Appellate Court except to the extent that it was better for the learned Appellate Court to have expressly mentioned in its order that in the event, the conviction of the petitioner/appellant is maintained at retrial, the period of one year already undergone shall stand set off. It was otherwise implied that in case of any such eventuality as aforementioned, the period undergone would stand set off in view of the law.
8. It is admitted case of the petitioner/appellant that the learned Appellate Court initially ordered the suspension of sentence subject to payment of 20% of the fine amount which he did not pay. So, had the petitioner/appellant deposited the 20% of the fine amount, he should not have undergone the simple imprisonment of one year subject to the final outcome of the appeal. It was due to the pendency of the appeal for its decision on merits that petitioner/appellant was

not immediately required to pay the amount of fine and compensation.

9. In the backdrop, the instant revision petition is accordingly disposed of with the direction to the learned Trial Magistrate to proceed on the retrial of the complaint as already directed by the learned Appellate Court vide order dated 02-08-2025. The period of simple imprisonment of one year already undergone by the petitioner/appellant, in case the conviction is maintained, shall stand set off.

10. ***Disposed of.***



SRINAGAR:
01.09.2025
Akfil Dev

Whether the order is speaking/reportable Yes