

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

Pronounced on:22.04.2026

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*Whether the operative part or
full order is pronounced:*

Full

Ref (Crl) No.02/2026

GH. HASSAN BHAT

...PETITIONERS/APPELLANT(S)

Through: -

Vs.

BASHIR AHMAD DAR

...RESPONDENT(S)

Through: -

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

ORDER(ORAL)

1) The present reference has been made by the learned Additional Sessions Judge, Bandipora, while passing order dated 09.03.2026 in appeal under Section 374 (3) of Cr. P. C filed by appellant Gh. Hassan Bhat against his conviction recorded by the learned Judicial Magistrate 1st Class, Sumbal, vide his judgment dated 06.02.2025 read with order dated 03.03.2025.

2) The learned Additional Sessions Judge, Bandipora, while making reference to this Court, has framed the following question for determination of this Court:

- (i) Whether the conviction is liable to be set aside solely on the ground of prematurity of the complaint, in view of the declaration of law in

Yogendra Pandey, (2014) 10 SCC 713, which holds that a complaint filed before the expiry of the fifteen-day period is no complaint in law and that cognizance taken thereon is without jurisdiction and whether the said declaration, made on a reference arising before any trial had commenced, was intended to and does extend with equal and unqualified force to the setting aside of a conviction recorded after a full dress trial in which the accused never raised the prematurity objection?

- (ii) Whether the provisions of Section 465 of the Code of Criminal Procedure, 1973 which prohibit the reversal of any finding or sentence on account of any error, omission or irregularity in the proceedings unless a failure of justice has been occasioned thereby have any operation in such a factual context so as to protect the conviction from being disturbed; and if so, whether the prematurity of the complaint constitutes an error or irregularity in the proceedings within the meaning of Section 465 Cr.P.C. or a jurisdictional nullity that Section 465 cannot reach having regard to the distinction between a complete want of jurisdiction and an irregular exercise of jurisdiction that has long been recognised in criminal jurisprudence?
- (iii) Whether the doctrine of waiver of non-jurisdictional procedural rights operates in such a factual context - where the accused never raised the prematurity objection across the entire trial and raised it for the first time in written arguments during the appellate proceedings so as to disentitle him from relying upon it at this stage; and if so, whether the defect of prematurity constitutes a jurisdictional bar incapable of waiver by conduct or a condition precedent to the filing of the complaint, the benefit of which may be waived by the conduct of the accused who chose not to raise it and who has not demonstrated any failure of justice on account of it.

3) Before proceeding to decide as to whether the questions framed by the learned Additional Sessions Judge are required

to be answered by this Court, it would be necessary to ascertain as to whether the questions framed by the learned Additional Sessions Judge fall within the ambit of Section 395 of the Cr. P. C.

4) For determining the aforesaid issue, it is necessary to have a look at the provisions contained in Section 395 of the Cr. P. C which reads as under:

395. Reference to High Court.-(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, The determination of which is necessary of the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation. - In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

5) A reading of the aforesaid provision would reveal that a court can make a reference to the High Court if it is satisfied that a case pending before it involves a question as to the

validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for disposal of a case. Reference can also be made by the court if it is of the opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative but has not been declared as by the High Court to which that Court is subordinate or by the Supreme Court.

6) As per sub-section (2) a Court of Sessions or a Metropolitan Magistrate can also make a reference to the High Court if it thinks fit that any question of law arises for consideration. Thus, a question arising in a matter may also be referred to the High Court.

7) It has to be borne in mind that it is not that all questions of law can be referred to the High Court for its decision. It is only those questions of law which have not been deliberated upon or decided by the Supreme Court or the High Courts of the Country, that can be referred to the decision of the High Court. A question of law which has been settled by a binding judicial precedent cannot be referred to the High Court for its decision in terms of Section 395 of the Cr. P.C.

8) The learned Reference Court, while making the instant reference seeking opinion of this Court on the questions of law formulated by it, has recorded that the complaint filed by

the respondent/complainant against the appellant was premature, inasmuch as fifteen days from the date of receipt of demand notice had not expired when the learned trial Magistrate had taken cognizance of the offences and issued process against the appellant. It has been observed by the learned Reference Court that the issue about the maintainability of the complaint was never raised by the appellant either during trial of the case or even before the Appellate Court and it is only at the time of final arguments that the said issue has been raised.

9) The learned Additional Sessions, has after noticing the legal position on the issue as laid down by the Supreme Court in the case of **Yogendra Pratap Singh vs. Savitri Pandey and anr.** (2014) 10 SCC 713 and **Gajanand Burange vs. Laxmi Chand Goyal**, 2022 LiveLaw (SC) 682 wherein it has been laid down that any complaint filed before the expiry of fifteen days from the date on which notice has been served, is no complaint in the eyes of law and that no cognizance of an offence can be taken on the basis of such complaint, expressed an opinion that Section 465 of the Cr. P. C can be pressed into service to protect the conviction from being disturbed as no failure of justice would be occasioned because the appellant has never objected and has participated in the entire trial without any demur. It is in these circumstances

that the learned Additional Sessions Judge has referred three questions of law quoted hereinbefore for decision of this court.

10) So far as the first question framed by the learned Additional Sessions Judge is concerned, the legal position has been clearly stated in **Yogendra Pratap Singh's** case (supra), which has been followed by the Supreme Court in **Gajanand Burange's** case (supra) and by Karnataka High Court in the case of **Armugam vs. Ananda**, 2025 KHC:21074.

11) So far as second and third questions formulated by the learned Additional Sessions Judge are concerned, the issue whether the illegality committed by the trial court in taking cognizance of the offences at a stage when the complaint was premature goes to the root of the case or whether such an illegality can be cured or overlooked by pressing into service Section 465 of the Cr. P. C, is a matter which has to be decided by the learned Additional Session Judge in the light of the judicial precedents on the subject. It would be pertinent to remind the learned Additional Session Judge that it is only the curable irregularities which cannot have any effect upon the finding, sentence or order passed by a court of competent jurisdiction unless the same result in failure of justice, which can be ignored whereas the incurable illegalities would vitiate the trial even if no failure of justice has occasioned. Thus, a defect which goes to the root of the case cannot be condoned

by pressing into service Section 465 of the Cr.P.C. The issue as to whether taking of cognizance of a complaint at a premature stage would constitute a curable irregularity or an incurable illegality, is a question which has to be decided by the learned Additional Sessions Judge and on that basis, he has to take a call whether the judgment of conviction recorded by the learned trial court is sustainable in law. This Court cannot undertake legal research to assist the learned Reference Court in taking a decision on this issue. There is a plethora of judgments delivered by this Court and different High Courts of the country on the issue as to which of irregularities are curable and which of those are not curable in nature. The issue is not a virgin area where this Court can be called upon to return its opinion. Any finding by this Court on this issue would prejudice the right of assailing the judgment of the appellate court to the unsuccessful party.

12) This Court would also like to remind learned Additional Sessions Judge that the observation recorded by the said Court that the appellant has raised the issue with regard to prematurity of the complaint only at the time of final arguments of the case is against the record. A perusal of the memo of appeal would show that in the first preliminary submission itself, it has been clearly pleaded by the appellant that conviction and sentence has been passed by committing

manifest error apparent on the face of the proceedings by ignoring and disregarding the law laid down under Section 138 of Negotiable Instruments Act, which provides for ingredients of the offence including the conditions precedent, which are missing in the present case amounting to exceeding of jurisdiction. Therefore, the appellant had clearly projected the ground that the ingredients for taking cognizance of offences under Section 138 of Negotiable Instruments Act are not satisfied in the present case. Thus, it is not a case where the appellant has all of a sudden, at the fag end of the appellate proceedings raised the ground of non-fulfilment of ingredients necessary for taking cognizance of offence under Section 138 of Negotiable Instruments Act.

13) In view of what has been discussed hereinbefore, it is clear that in the present case no substantial question of law arises which is required to be determined by this Court. Therefore, the reference is returned with a direction to the learned Additional Sessions Judge, Bandipora to proceed further in the matter in accordance with law.

(Sanjay Dhar)
Judge

SRINAGAR
22.04.2026

“Bhat Altaf-Secy”

Whether the Order is speaking:	YES
Whether the Order is reportable:	YES/NO