Item No. 13
Regular List

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

CRM(M) No.318/2021
CrlM No.1112/2021

FAIZAN NABI NATOO & ANR. …Petitioner(s)

Through: Ms. Mehreen Altaf, Advocate.

Vs.

ONEEB MUKHTAR NATHKHAN …Respondent(s)

Through: None.

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

ORDER(ORAL)
04.09.2024

1. The petitioners, through the medium of present petition filed under Section 482 of the Code of Criminal of Criminal Procedure, challenged orders dated 23.04.2019 and 19.08.2021, passed by the learned Judicial Magistrate 1 Class (Judge Small Causes), Srinagar, in a complaint bearing File No.52/M, titled "M/S G. N. Natoo & sons vs. Oneeb Mukhtar Nathkhan". By virtue of the impugned order dated 23.04.2019, the complaint filed by the petitioner has been dismissed as withdrawn observing therein that there has been an out of court settlement between the petitioners and the respondent. In terms of order dated 19.08.2021, application of the petitioners for recalling/reviewing order dated 23.04.2019 has been dismissed.

2. Impugned orders have been assailed by the petitioners, primarily, on the ground that though they had instructed their advocate to withdraw the complaint with liberty to pursue the remedies available in civil law, but the learned counsel exceeded his authority and filed an application for withdrawal of the complaint simpliciter by pleading therein that there had been an out of court amicable settlement between the parties. It is submitted by learned counsel for the petitioners, that, as a matter of fact, there was no settlement arrived at between the parties and it was only a decision taken by the petitioners/complainants to pursue the civil remedies instead of pursuing the complaint which despite lapse of considerable time was not yielding any tangible results.

3. I have heard Ms. Mehreen Altaf, learned counsel for the petitioners, and perused the record.

4. From the material on record, it transpires that hat the application for seeking withdrawal of the complaint bears signatures of the counsel for the petitioners and not the signatures of the petitioners. As a matter of fact, the court below has recorded the statement of learned counsel only without insisting on recording of statement of the petitioners. In these circumstances, there appears to be merit in the submission of the petitioners that they had not entered in a settlement with the respondents.

5. In view of the aforesaid position coupled with the fact that the respondent despite service has not chosen to contest this petition, the same is disposed of by providing that notwithstanding anything contrary contained in the order impugned, the dismissal of the complaint of the

petitioners as withdrawn in terms of the order impugned dated 23.04.2019 shall not be a bar for the petitioners to avail of the remedies available to them in law including the remedies in civil law.

(Sanjay Dhar)
Judge

Srinagar
04.09.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No



Mohammad Altaf Bhat
I attest to the accuracy and
authenticity of this document

05.09.2024 09:55