

ORDER BELOW EXHIBIT-1 IN C. C. NO. 881/2021

(1) (1.1) Complainant, Abrar Amin Shaingwala filed such complain U/Sec 138 of The Negotiable Instruments Act against two accused,(1) Shree Ram Rayon- Firm and its organiser, (2) Mr. Rashik Patodia. It ia a case of complainant that his firm was sold goods to accused firm and in the levy amount of such goods, accused firm was issued cheques mention as in the para no.4 of complain and on the presentation in the bank, all cheques were dishonored. So complainant was issued notice as per provision of NI Act, but accused firm was failed to pay such levy amount within stipulated time and hence complainant was filed such complain.

(1.2) On issuing summon accused firm and its organiser was appeared before court and denied his plea guilty, so matter was proceed as per procedure Law.

(2) During the pendency of trial, Parties and their Learned Advocates are file Compromise *pursis* vide **Exhibit-15** and pray to draw award about their settlement. Such matter is taken into today's Lok-Adalat. In the case of ***K.K.Govindam Kutty Menon Vs. C.D.Shaji reported as AIR 2012 SC 719*** Hon'ble Supreme Court of India in Para.17 held that

"17) From the above discussion, the following propositions emerge:

- (1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.*
- (2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.*
- (3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.*
- (4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court."*

Perusal of above para makes it clear that even Awards passed by Criminal Court in Lok-Adalats are to be treated as decree and is also executable. It is also required to be noted that, Hon'ble Supreme Court in case of ***Krishnarao Vs. Shankargauda reported as 2018 SCC***

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Online(SC) 651 has laid down that primary object of the provisions is compensatory, and punitive element being mainly with the object of enforcing the compensatory element.

- (3) At this juncture, it is also to be noted that complainant has entered into compromise with accused. It appears that accused has accepted his liability and in pursuance of the same he has issued cheques as per schedule of para no.1 of such pursis vide **Exh-15** . Thus, it transpires that accused has willingly accepted his liability and thus matter is settled between parties. Accused is supposed to honour terms and conditions of the pursis, in failure of the same complainant, is not supposed to again run from pillars to pillars to get his amount and if any failure will be there from accused side, then the complainant can initiate necessary proceedings under Civil law. What is necessary proceedings is explained by various Hon'ble High Courts. And as per settled principles, it is execution of the award or recovery by filing application under section-431 of Criminal Procedure Code. (*see. Somashekara Vs. Smt. G.S.Geetha reported as 2020(3) Cri.C.C.370.*) If such ratio is read in connection with facts of the present case, then it can be said that, if accused fails to honour terms and conditions of the pursis then, complainant is at liberty to approach court for execution of award passed today, by resorting to above mention procedure. Complainant again not need to start new prosecution against accused. As it will place complainant in the situation as he was when present case came to be filed. In pursuit of above discussion following order is passed.

ORDER

1. The dispute between the parties having been referred for determination in this National *Lok-Adalat* and the parties having compromised/settled the matter as per compromise pursis vide Exhibit-15 is duly acknowledged. Hence, in view of the above referred compromise, Award is passed accordingly.

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2. If, accused fails to honour terms and conditions of the settlement, complainant will be free to either to go for execution by way of civil way or to file application U/S 431 of Criminal Procedure Code.
3. Award passed today in National *Lok-Adalat*.

09/03/2024

Surat

(Jitendrakumar Prabhudas Prajapati)

JUDGE CODE NO.GJ01121.

17th Add. Senior Civil Judge-Surat