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

CRM(M) No. 392/2024 c/w
CRM(M) No. 219/2024

Reserved on: 13.08.2026
Pronounced on: 18.08.2026
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Whether the operative part or full judgment is pronounced? *FULL*

Manzoor Ahmad Khan
S/o Sheeraz Ahmad Khan
R/o HMT, Khushipora, Zainakote, Sgr.
Aged 48 years

…Petitioner(s)/Appellant(s)

Through: Mr S. T. Hussain, Sr. Adv. with
Ms. Nida Nazir, Adv.

Vs.

Javaid Ahmad Malik
S/o Mohammad Sumander Malik,
R/o Maratgam, Handwara, Kupwara

...Respondent(s)

Through: Mr. M. Y. Bhat, Sr. Adv. with
Mr. Sajad Ahmad Bhat, Adv.

CORAM:

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

1. These clubbed petitions arise from the same transaction between the same parties and are, therefore, taken up together and proposed to be disposed of by a common judgment.

2. In both the petitions, the petitioner was the accused and the respondent was the complainant before the learned Magistrate, (Trial Magistrate). Accordingly, the parties shall hereinafter be referred to as "petitioner and respondent" respectively.

3. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of Criminal Procedure Code (CrPC) seeking quashing of the complaints filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 (NI Act) and the consequent cognizance orders dated 8 October 2022 and 22 December 2022, whereby the Trial Magistrate, while

taking cognizance of the offence, issued process against the petitioner. The petitioner has also questioned the order dated 24 March 2023 whereby a warrant for production of the petitioner was issued.

Factual Matrix:

4. Succinctly stated, the relevant facts are that there was a land transaction between the parties. In furtherance thereof, the respondent is said to have paid ₹ 45.50 lacs to the petitioner for purchase of land at Srinagar. The petitioner was to execute a Sale Deed in favour of the respondent's wife. Though revenue extracts of the land-subject forming the matter of the transaction are alleged to have been obtained, but the petitioner failed to execute the sale deed. Consequently, a dispute arose, the petitioner issued multiple cheques (ten in number) towards repayment of the amount received by him from the respondent for the sale of the land.

5. When these cheques were presented by the respondent for encashment, the same were dishonored. Two demand notices were accordingly issued, resulting in the filing of two complaints being Complaint No. 327/B and 220/A on 08.10.2022 and 22.12.2022 respectively, for a total amount of ₹ 45.50 lacs.

6. The Trial Magistrate took cognizance and issued process vide the impugned orders dated 8 October 2022 and 22 December 2022. Thereafter, vide the impugned order dated 24 March 2023, a warrant was also issued for production of the petitioner, who, at the relevant time, was lodged in Kotbalwal Jail under the Public Safety Act. The petitioner was released on 27 July 2023 and thereafter the parties are stated to have entered into a Compromise dated 22 August 2023, but same did not materialize.

7. It is also equally noteworthy that the petitioner had, in an earlier round of litigation, approached this Court challenging the order of the Trial Magistrate whereby he was directed to deposit 20% of the cheque amount [CRM(M) No. 481/2023]. The High Court has set-aside the trial court order vide order dated 19 May 2025. The other attempt of the petitioner failed at the threshold, whereby the petition No. CRM(M) No. 496/2023 was dismissed as withdrawn.

8. Certain developments during intervening period are also worth noting. These petitions were at one point of time dismissed due to continuous absence of the petitioner, but were later restored. During the interregnum, the Trial Magistrate recalled the non-bailable warrants of arrest vide order dated 20 September 2025 in view of the pendency of the present proceedings.

9. The present stage of the trial also assumes importance. Therefore, it may be noted that the evidence of the respondent stands complete and the petitioner-accused has already examined two defence witnesses. Thus, it is apparent that the trial is at the verge of completion, but for the stay order passed by this Court in the present proceedings.

Challenge and submissions:

10. The principal ground of challenge urged by the petitioner is that the cheques were purely security cheques which were forcibly obtained under political pressure in the office of the Sub-Divisional Magistrate (SDM), Srinagar (West), after a dispute over the land transaction.

11. It is further contended that the actual amount received was only ₹ 32 lacs; that the cheques reflected an inflated amount of ₹. 45.50 lacs; that the demand notice is undated and was never received by the petitioner; that while the petitioner was under PSA detention, no proper service of summons took place; and that after his release, the parties settled the matter on 22 August 2023 for ₹ 5 lacs, but the said compromise remained unsuccessful.

12. It is further urged by the petitioner that the complaints are not maintainable because the mandatory pre-conditions of Section 138 of the NI Act have not been complied with and, therefore, the cognizance itself is illegal and amounts to abuse of process of law. It is also contended that multiple cheques form the subject matter of one complaint under Section 138 of the NI Act, hence the complaint themselves are not maintainable.

13. Mr S. T. Hussain, learned senior counsel for the petitioner, also vehemently argued that there is no proof of reflection of such a huge transaction amounting to ₹ 45.50 lacs in the income tax return of the complainant and, therefore, no presumption under Section 139 of the NI Act

can be raised. In this regard, learned senior counsel made reference to Section 269-B of Income Tax Act, 1961. (Act of 1961).

14. Ex-adverso, Mr. M. Y. Bhat, learned senior counsel for the respondent argued that the respondent has filed two independent complaints under Section 138 of the NI Act in respect of the dishonoured cheques issued by the petitioner; that the statutory notices duly issued; and that the complaints were filed after the requisite periods. It is further contended that the petitioner has repeatedly delayed the trial by filing successive petitions before this Court. Learned counsel submitted that this court in CRM(M) No. 481/2023 had directed the Trial Magistrate to dispose of the complaints expeditiously without insisting upon deposit of 20% of the complaint amount.

15. Learned counsel for the respondent further submitted that the admission on the part of the petitioner that the parties had entered into a settlement is proof of the fact that they had entered into the transaction and therefore, it does not lie in the mouth of the petitioner to contend that the cheques were not issued towards the discharge of a legally enforceable debt. The respondent has also invoked the statutory presumption under Section 139 of the NI Act.

Analysis:

16. The petitioner has challenged the cognizance orders. However, the trial has now reached the stage of the petitioner-accused's evidence and, in this regard, two defence witnesses have already been examined by the petitioner.

17. It is trite that once a *prima facie* case under Section 138 of the NI Act is disclosed, the High Court cannot embark upon a mini trial or decide disputed questions of fact, such as whether the cheques were security cheques, whether there exists a legally enforceable debt, whether actual service of notice was effected, or what is the effect of any settlement. All these questions are required to be decided by the trial Court in the light of the presumption under Section 139 of the NI Act.

18. When defence evidence has commenced and is almost complete, interference under Section 482 CrPC is ordinarily uncalled for. The trial court is the proper forum to appreciate the evidence. This is a case which also necessitates examination of the conduct of the petitioner, who has repeatedly stalled the proceedings and, even after the earlier order of this Court directing speedy disposal, has again at the fag end of the trial invoked the jurisdiction of this Court under Section 482 CrPC. Such practice is required to be deprecated in no uncertain terms.

19. The facts as discernible from the reading of the complaints are that the petitioner-accused had issued as many as ten cheques and, when same were bounced, the respondent-complainant issued two demand notices. Consequently, one complaint pertains to nine cheques and the other pertains to the one cheque, emanating from the two demand notices.

20. As regards the maintainability of the two complaints in respect of the ten cheques is concerned, once two demand notices had been issued, it was well within the jurisdiction of the Trial Magistrate to entertain two separate complaints, especially when all the cheques formed part of one and the same transaction. This issue stands clinched by a Co-ordinate Bench of this Court in **Fayaz Ahmad Rather vs. Tariq Ahmad Wani. (CRM(M) No. 405/2023).** It is well settled, nay, trite that a single complaint in respect of dishonour of more than three cheques is maintainable if a consolidated notice of demand is served upon the accused.

21. Insofar as the alleged violation of Section 269-B of the Act of 1961 is concerned, same is absolutely misconceived and, if accepted, would lead to absurdity. Mere non-reflection of the transaction in the complainant's Income Tax returns does not, by itself, destroy the presumption under Section 139 of the NI Act. This issue stands settled in **Sanjabij Tari vs. Kishore S. Borcar and Anr. AIR Online 2025 SC 980,** wherein the Hon'ble Supreme Court held that any breach of Section 269SS of the Income Tax Act, 1961, is subject only to a penalty under Section 271D of the said Act. It has further been held that any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act, nor would it rebut the presumptions under Sections 118 and 139 of the NI Act,

because the payee/holder in due course is liable only to the penalty prescribed under the Income Tax Act. The argument that any transaction above ₹ 20,000/- is illegal and void and, therefore, does not fall within the definition of "legally enforceable debt" cannot be countenanced. In fact, the reference by learned senior counsel to Section 269-B of the Act of 1961 itself is self defeating and misconceived; the relevant provision rather it is Section 269SS of the Income Tax Act, 1961, which deals with the mode of taking or accepting certain loans, deposits and specified sum.

22. Insofar as Section 269-B of the Act of 1961 is concerned, it has no relevance whatsoever to cheque bounce cases. The said provision deals only with the appointment of a "competent authority" for acquisition of immovable property which has been transferred for understated/undervalued consideration, to counteract tax evasion and has nothing to do with loans, deposits, or cash transactions. The argument on this count is, therefore, rejected.

23. On a plain reading of both complains, the basic ingredients of Section 138 of the NI Act are *prima facie* disclosed. The respondent-complainant has also led his evidence, including the evidence of the witness from the Postal Department. Once that threshold is crossed, the complaints cannot be quashed mid-trial by examining the defence version.

24. In **Rathish Babu Unnikrishnan vs. State (NCT of Delhi) & Anr. AIR Online 2022 SC 632**, the Hon'ble Supreme Court while dealing with the scope of Section 482 in a case arising under the provisions of Negotiable Instruments Act, held thus:

> "19. In our assessment, the impugned judgment is rendered by applying the correct legal principles and the High Court rightly declined relief to the accused, in the quashing proceeding. Having said this, to rebut the legal presumption against him, the appellant must also get a fair opportunity to adduce his evidence in an open trial by an impartial judge who can dispassionately weigh the material to reach the truth of the matter. At this point, one might benefit by recalling the words of Harry Brown, the American author and investment advisor who so aptly said - "A fair trial is one in which the

> rules of evidence are honored, the accused has competent counsel, and the judge enforce the proper court room procedure – a trial in which every assumption can be challenged." We expect no less and no more for the appellant."

25. The High Court cannot conduct a mini trial or a roving enquiry into disputed questions of fact such as, existence of a legally enforceable debt, actual service of notice, etc. These are matters for the trial court, particularly in view of the statutory presumption under Section 139 of the NI Act.

26. The power under Section 482 CrPC is exceptional and is not intended to short-circuit a trial that is already at an advanced stage. When defence evidence has commenced, the proper course is to allow the trial court to conclude the matter on merits.

27. For the foregoing reasons and keeping in view the advanced stage of the trials, any observations on the factual narrative contended by the petitioner would prejudice the parties at the stage of appreciation of evidence by the Trial Magistrate.

28. Accordingly, both the petitions CRM(M) No. 392/2024 and CRM(M) No. 219/2024 deserve to be dismissed and are hereby **dismissed**.

29. The trial court shall conclude the examination of the remaining witnesses by holding day-to-day trial and shall dispose of both the complaints expeditiously preferably within a period of one month, regard being had to the direction already passed by this Court in CRM(M) No. 481/2023 without fail.

30. Disposed of with connected CrlMs.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
18.08.2026
Altaf

Whether approved for reporting? Yes