

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

**CRM(M) No.409/2024  
CrIM No.949/2024**

ABDUL RASHID YATOO ...Petitioner(s)

Through: Mr. A. M. Dar, Sr. Advocate, with  
Mr. Bhat Shafi, Advocate.

Vs.

ABDUL GANI MALIK ...Respondent(s)

Through: None.

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

**ORDER(ORAL)**  
**22.07.2024**

1. The petitioner has challenged complaint filed by the respondent against him for offence under Section 138 of Negotiable Instruments Act (for short "N. I. Act"). Challenge has also been thrown to order dated 18.01.2018 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Pattan (hereinafter referred to as "the trial Magistrate"), whereby the learned trial Magistrate has, after recording satisfaction that, prima facie, offence under Section 138 of N. I. Act is made out against the petitioner, issued process against him.

2. Heard learned Senior Counsel appearing for the petitioner and perused record of the case.

3. It appears that the respondent has filed a complaint under Section 138 of N. I. Act against the petitioner alleging therein that the petitioner

has issued two cheques, one dated 22.09.2017 for Rs.3.50 lacs and another dated 23.09.2017 for Rs.3.00 lacs, in favour of the respondent in connection with transaction regarding sale of land. It has been alleged in the complaint that when the aforesaid two cheques were presented for encashment, the same were returned on account of insufficiency of funds in terms of dishonour memo dated 13.12.2017. The notice of demand dated 27.12.2017 is stated to have been served by the respondent upon the petitioner but in spite of this, the petitioner did not liquidate the cheque amount, which compelled the respondent/complainant to file the impugned complaint before the learned trial Magistrate.

4. Learned Senior Counsel appearing for the petitioner has contended that the impugned complaint against the petitioner is totally misconceived because the transaction between petitioner and the respondent is purely civil in nature. It has been submitted that the cheques in question were issued by the petitioner in good faith as security pending execution and registration of sale documents but because the respondent failed to adhere to the terms and conditions of the agreement, as such, the cheques, which are subject matter of the impugned complaint, could not be cleared. According to learned Senior Counsel, the respondent has misused the security cheques and that there is no enforceable debt due to the respondent from the petitioner. It has been further contended that impugned order dated 18.01.2018 passed by the learned trial Magistrate is cryptic in nature and it does not reflect the application of mind on the part of the learned Magistrate.

5. The essential elements for constituting an offence under Section 138 of N. I. Act are, issuance of a cheque by the drawer in favour of the payee, presentation of the cheque by the payee within a period of three months from the date of its issue, returning of the cheque unpaid due to insufficiency of funds, service of demand notice by the payee upon the drawer and failure of the drawer to liquidate the cheque amount to the payee within fifteen days of receipt of notice of demand. Section 139 of the N. I. Act raises a presumption, which is rebuttable in nature, that holder of a cheque has received the cheque for discharge in whole or in part of any debt or other liability.

6. Coming to the facts of the instant case, it has been admitted by the petitioner that the cheques, which are subject matter of the impugned complaint, have been issued by him. There is no denial to the fact that the cheques in question were dishonoured due to insufficiency of funds. According to the impugned complaint, the notice of demand was served upon the petitioner but he failed to pay the amount of the cheques. Thus, presumption under Section 139 of the N. I. Act arises in favour of the respondent and against the petitioner. It is the defence of the petitioner that he had issued these cheques as security and when the transaction of sale did not mature, he was not obliged to pay the said amount and, as such, there is no enforceable debt due against him. The veracity of the defence raised by the petitioner cannot be determined by this court in these proceedings. It will be for the trial Magistrate to determine its

veracity during trial of the case. Therefore, on this ground, the petitioner cannot seek quashment of the impugned complaint.

7. The contention of the petitioner that the transaction between the parties is civil in nature, as such, the proceedings under Section 138 of the N. I. Act would not lie, is absolutely preposterous for the reason that every cheque bounce case emanates from a commercial transaction between the parties. The provisions contained in Chapter XVII have been incorporated in the N. I. Act so as to accord enhanced acceptability to cheques in the course of commercial transactions and to provide a regulatory mechanism so as to prevent harassment to the honest cheque bearers. The provisions facilitate smooth functioning of any transaction between the drawer and the bearer. Thus, the very basis of cheque bounce cases is underlying commercial transaction between the parties. If the argument of the learned Senior Counsel for the petitioner is accepted, then the provisions contained in Chapter XVII of the N. I. Act would become redundant. Therefore, the contention of the learned Senior Counsel in this regard deserves to be rejected.

8. That takes us to the legality of order dated 18.01.2018 passed by the learned trial Magistrate, whereby the process has been issued against the petitioner. It is true that the said order is brief but it is clearly recorded in the said order that the trial Magistrate has gone through the complaint and preliminary evidence and he has also recorded a satisfaction that, prima facie, offence under Section 138 of the N. I. Act is made out against the petitioner. It is not the requirement of law that the Magistrate

has to record all the allegations made in the complaint while passing the order for issuance of process against the accused. Such order has to reflect the application of mind to the material on record on the part of the Magistrate, which in the instant case is clearly discernible from a perusal of the impugned order dated 18.01.2018. Therefore, it cannot be stated that there has been non-application of mind on the part of learned Magistrate in passing the said order.

9. For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly.

10. A copy of this order be sent to the learned trial Magistrate for information.

**Srinagar**  
22.07.2024  
"Bhat Altaf-Secy"

(Sanjay Dhar)  
Judge

*Whether the order is reportable: Yes/No*

