

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 06.08.2025
Pronounced on: 19.08.2025**

CRMC No.149/2019

**Nilotpaul Dutta, age 28 years
S/O Rakesh Kumar
R/O Village Chinote, Bhaderwah**

.....Petitioner

Through: Mr. Sachin Sharma, Advocate

VS

**Mohd. Latif
S/O Hasan Ali
R/O Lale De Bagh
Lower Muthi,
District Jammu.**

.....Respondents

Through: Ex Parte

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner, through the medium of this petition under Section 482 of CrPC, seek quashment of complaint titled '*Mohd. Latif V. Nilotpaul Dutta*' for alleged commission of offence punishable under Section 138 of Negotiable Instruments Act, filed by the respondent against the petitioner and is pending before the court of learned Municipal Magistrate, Jammu, and setting aside of impugned order dated 05.06.2018, whereby cognizance has been taken in the complaint.

2. Brief facts which led to filing of this petition are that the petitioner intended to purchase 2 kanals of land situated at village Narsoo, Tehsil & District Udhampur; that the respondent entered into an agreement to sell with the petitioner on 25/10/2017, for the aforesaid land under Khasra No. 684/ 538/ 499/340, recorded by Mutation No. 511; that the total sale consideration was

fixed as ₹20,00,000/-, out of which ₹10,00,000/- was paid (₹9,00,000/- cash and ₹1,00,000/- by cheque) and two security cheques of ₹5,00,000/- each, were also issued; that on the same day, the respondent executed a 'General Power of Attorney' before Sub-Registrar Udhampur authorizing the petitioner to sell, mortgage, or lease the land and register necessary documents; that the petitioner also paid stamp duty of ₹20,500/- for execution of the Power of Attorney.

3. It is alleged that, the petitioner later discovered that the respondent was not the owner of the said land as it came to light that the land was already sold by respondent's mother in the year 2003 for ₹90,000/- and some portion was also acquired for road widening; that the respondent was never in possession of the land and the petitioner requested him to execute the sale deed or refund the amount, but he refused; that the petitioner alleges fraud, misrepresentation, and coercion by the respondent. The petitioner filed an application under Section 156(3) Cr.P.C. before Ld. Munsiff, Udhampur for registration of FIR against the respondent for fraud, cheating, and coercion. The respondent thereafter filed a civil suit titled '*Mohd Latif v/s Nilotpaul Dutta*' before the court of learned Sub-Judge Udhampur seeking possession of the land. The court passed an order dated 04/09/2018 directing both parties to maintain status quo.

4. The respondent also issued a legal notice dated 09/05/2018 and filed a complaint under Section 138 of Negotiable Instruments Act for dishonour of two cheques of ₹5,00,000/- each (dated 24/04/2018) before the court of Ld. Municipal Magistrate, Jammu. The court took cognizance on 05/06/2018. The petitioner replied to the legal notice on 20/05/2018 denying liability, contending that cheques were issued as security and no sale deed was executed; hence, no

legally enforceable debt exists. The petitioner claims that the complaint under Section 138 NIA is an abuse of process of law, filed to extort money, and that the respondent acted with fraudulent intent from the beginning. Hence the present petition is filed before this Court seeking to quash the complaint under Section 138 NIA and consequential order dated 05/06/2018 passed by the learned Municipal Magistrate, Jammu.

5. Notice, issued to the respondent, did not evoke any response and substituted service was ordered, however, despite service of notice published in Daily Excelsior in its edition of 6th April 2023, respondent did not appear to contest this matter, as such, he was proceeded ex parte vide order dated 06.08.2025.

6. Heard ex parte arguments and considered the matter..

7. Learned counsel for the petitioner while advancing the arguments reiterated the contentions raised and grounds urged in the petition and prayed for grant of the reliefs as prayed in the petition. He argues that though the parties had entered into an 'agreement to sell' on 25.10.2017, with regard to a piece of land measuring two kanals comprising of Survey No.634/538/499/340 of village Narsoo Tehsil Udhampur, which was attested by Notary Public; that a 'power of attorney' was also registered with Sub Registrar Udhampur on 25.10.2017 on payment of ₹20,500/- as Stamp Duty. He, however, alleges that the respondent, without being owner of the land in question coerced the petitioner manipulatively executed these documents, charged ₹10.00 lac, with condition to pay the balance amount of ₹10.00 lac, at the time of sale deed.

8. He further argued that the petitioner applied for demarcation of land on 22.09.2018 and as per revenue report dated 14.10.2018, the land was not

found in the name of respondent; that respondent also filed a case seeking injunction against the petitioner on 10.05.2018, claiming that 'agreement to sell' executed between the parties was unenforceable; that the suit was later dismissed in default; that the complaint impugned was filed by the respondent, to enforce the contractual liability against the petitioner, with regard to payment of cheque amounts which had been issued as security only, subject to the conditions of the agreement on its performance. Hence, the complaint and the cognizance both impugned were liable to be quashed.

9. In the case on hand, petitioner had issued undated cheques of ₹5,00,000/- each, in terms of the agreement of sale dated 25.10.2017. The respondent has failed to discharge his obligations under this agreement and without discharging his obligations under the agreement of sale, presented the cheques, for their encashment, which were allegedly dishonoured.

10. Perusal of the case file would show that a complaint under Section 138 NI Act titled 'Mohd. Latif V/S Nilotpaul Dutta' had been filed by respondent herein against the petitioner qua dishonoring of payee account cheques bearing No. 839607 and No. 839608, for an amount of Rs.5,00,000/- each, before the trial court, whereupon, the trial court took cognizance and summoned the petitioner vide impugned order.

11. The law is fairly well settled that if a cheque is issued to discharge liability or debt to arise in future, subject to fulfillment of certain conditions, till fulfillment of such conditions, legally enforceable liability would not arise and an offence under Section 138 of the Act is not attracted.

12. Hon'ble the Madras High Court in a case titled '**M/S Balaji Seafoods Exports (India) Ltd. V. Mac Industries Ltd.**' reported as **1998 0 Supreme**

(Mad) 1358 held that complaint under the provisions of Section 138 of the Negotiable Instruments Act is not maintainable in case an undated cheque is given only as security. The relevant paragraphs 8 and 10 are reproduced as:

“8. Therefore, on the date when the cheque was handed over, there was no legally enforceable debt or other liability. An undated cheque for Rs.35 lakhs was handed over as a security for the purpose of the contract. It was not handed over with the intention of making it as an instrument of immediate negotiation to discharge a subsisting liability or debt. Thus, this is a case where one of the parties to the contract had obtained a signed undated cheque for Rs.35 lakhs as a security. As dispute arose between the parties, the cheque is now utilized by the complainant to resort to Sections 138 of the Act by filing in a date convenient to him.

9. xxxx

10. Therefore, I am of the considered view that as an undated cheque having been given only as security, the provision of Section 138 of the Negotiable Instruments Act are not at all attracted and hence, the complaint against the accused under Section 138 of the Negotiable Instruments Act cannot be maintained at all.”

Hon’ble High Court of Kerala, in case titled **“Sri H. Ananda V. Mrs. Stella Annnextetia D’Silva’** in **Criminal Appeal No.803/2007** dated **07.04.2014**, held that *‘for an offence under Section 138 of the Negotiable Instruments Act, 1881, there must exist a legally enforceable debt or liability on the date of presentation of the cheque. If the cheque is issued for a liability that is subject to fulfillment of certain conditions or obligations, and such conditions are not fulfilled, the liability does not arise, and Section 138 is not attracted’.*

Hon'ble High Court of Kerala in another case, titled '**Unnikrishnan V. Jayaram**' reported as **2017 (2) RCR(Criminal) 871**, held that '*issuance of the cheque towards advance payment in pursuance of signing of contract, such cheques so issued towards advance payment cannot be treated as subsisting liability and dishonor of such cheque will not attract offence under Section 138 of the NI Act.*'

13. Reverting to the facts of the case on hand, the complainant, in his complaint, had alleged that two post-dated cheques amounting to ₹5.00 lac each, issued in favour of the complainant by the accused petitioner, on presentation at J&K Bank, Branch Udheywala, Jammu on 24.04.2018 and PNB Branch Udhampur on 03.05.2018, were dishonoured with the endorsement '*funds insufficient*'. To appreciate the contention raised in the complaint by the complainant-respondent, the 'agreement to sell' executed by him on 25.10.2017 is required to be looked into. As per this agreement attested by the Notary Public, particularly, covenant no.6, it has been agreed that the 1st party i.e. respondent herein, will be liable to encash the two cheques of ₹5.00 lac each, without mentioning date, after taking the possession of the land by the 2nd party i.e. petitioner herein.

14. Petitioner's case is that on execution of 'agreement to sell' and the 'power of attorney' by the respondent in favour of the petitioner, he had made efforts to take over the possession of the land, however, on demarcation, the land identified was found not to be in the name of the respondent herein. As such, the 'agreement to sell' could not be executed into the 'sale deed' for want of possession and title of the land in question. From the covenant no.6 of the agreement to sell, it is apparent that taking possession of the land is a condition

precedent, to encash the two cheques amounting to ₹5.00 lac each. The petitioner has also placed on record a copy of the plaint of a suit filed in the month of May 2018, by the respondent as plaintiff before the Civil Court at Udhampur for mandatory injunction directing the defendants to hand over the possession of the land to him. As such, there could be no scope of the performance of contract seeking injunction against the petitioner herein and as an ad interim relief, the Civil Court had directed the parties to maintain status quo with regard to raising any construction or improvement or change of the nature of the suit land, till final disposal of the suit.

15. From the pleadings, it is apparent that the cheques in question had been issued by the petitioner in favour of the respondent as security and were encashable subject to the performance of the contract. The contract had not been performed as the land in question was not found in the name and possession of the respondent herein. Therefore, when the condition precedent of performance of contract was not fulfilled, it cannot be stated that there was any legally enforceable liability on the petitioner to make payment of the aforestated cheques to the respondent, and dishonour of cheque, in view of the non performance of agreement to sell attributable to the respondent. The petitioner cannot be liable under Section 138 for dishonouring of the cheques for there being no legally enforceable liability. In the considered opinion of this court, the cheques, in question, had been issued as advance payment in pursuance of a performance of the contract, as such, such cheque, so issued, towards the advance payment cannot be treated as subsisting liability and dishonour of such cheques will not attract offence punishable under Section 138 of Negotiable Instruments Act.

16. Having regard to the aforestated reasons and discussions made hereinabove, this court is of the considered opinion that the filing of impugned complaint under Section 138 of the Negotiable Instruments Act is misuse of the process of the court, as there was no legally enforceable liability against the petitioner herein towards respondent.

17. Viewed thus, the petition is **allowed** and as a result, the impugned complaint is quashed along with proceedings therein.

18. A copy of this order shall be forwarded to the Trial Court, for its record and compliance.

19. The petition is, accordingly, disposed of.



OF JAMMU & KASHMIR AND LADAKH

(M A Chowdhary)
Judge

Jammu
19.08.2025
Raj Kumar

Whether order is speaking? Yes/No
Whether order is speaking? Yes/No