

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

CRM (M) No. 146/2025

Ghulam Rasool Dar

..... Appellant/petitioner(s)

Through: -
Mr.M. Sultan, Advocate.

V/s

Khalid Ahmad Khan and Another.

..... Respondent(s)

Through: -
Mr. A. Hanan, Advocate for Respondent No. 1

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE.

(ORDER)

20.12.2025

1. In terms of the order dated 5th May, 2025, the proceedings insofar as the petitioner is concerned were directed to be kept in abeyance. Today, the matter has been heard. Learned counsel for the parties have been heard and the record too was perused.

2. A complaint under Section 138 of the Negotiable Instruments Act was filed by respondent No. 1 against the petitioner and respondent No. 2, arraying them as accused, alleging that the petitioner, a land broker, had in the year 2005 received an amount of ₹45 lakhs from the complainant for the purchase of 10 Marla's of land at Srinagar. The transaction, however, did not materialize. Subsequently, upon intervention of respectable persons, a settlement was arrived at between the parties, wherein it was agreed that the amount would be refunded by paying ₹30 lakhs through six post-dated cheques, issued between 30.05.2018 and 20.06.2018. These cheques were stated to have been issued in discharge of past liability arising out of the failed land transaction.

3. Upon presentation, all the cheques were dishonoured, which constrained the complainant to file a complaint against the present petitioner and respondent No.

2. The learned trial court, vide order dated 12.09.2018, took cognizance of the offence.

4. The specific case set up by the petitioner is that he was not privy to any contract between the complainant and respondent No.2 and that there was no privity of contract between him and the complainant. It is contended that the cheques were issued by respondent No. 2 alone and that even the statutory demand notice was served only upon respondent No. 2. It is further urged that the trial court has wrongly taken cognizance against the petitioner despite there being no material to proceed against him under Section 138 of the Negotiable Instruments Act. Reliance has been placed upon the judgment of the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510, to contend that the essential ingredients of Section 138 are not satisfied, as the petitioner did not owe any legally enforceable liability towards the complainant.

5. Per contra, learned counsel appearing for the respondent submits that the complaint clearly narrates the nature of the transaction and specifically alleges that the land deal was negotiated between the complainant and the petitioner, who are closely related to respondent No. 2, being father and son. It is argued that since the petitioner failed to complete the sale transaction, it was agreed that the amount would be refunded, and the cheques were issued by respondent No. 2 towards the past liability incurred by the petitioner.

6. The petitioner does not dispute that respondent No. 2 is his son, nor does he deny the existence of an agreement for sale pursuant to which a substantial amount had changed hands. It is also not disputed that the cheques were issued in discharge of past liability. Whether such liability was individual or collective is a matter requiring evidence and can only be adjudicated during trial.

7. Merely because the cheques were drawn by respondent No. 2 and not by the petitioner does not, by itself, absolve the petitioner from being arrayed as an accused, particularly when the complaint contains specific averments that the sale transaction was entered into between the complainant and the petitioner. It is not mandatory that only the drawer of the cheque must be prosecuted under Section 138 of the Negotiable Instruments Act. A person who, in discharge of his liability, causes a cheque to be issued through another can also be proceeded against.

8. Respondent No. 2, being the drawer of the cheques, is undoubtedly liable for their dishonour; however, that does not exonerate the petitioner if the cheques were issued towards a liability that had accrued against him. It shall be for the complainant to establish during trial that the transaction was indeed between him and the petitioner. In the event of failure to do so, the petitioner would be entitled to appropriate relief. At this stage, however, the proceedings cannot be quashed.

9. In view of the foregoing reasons, this Court finds no illegality in the impugned order and no abuse of process of law by the complainant in initiating the proceedings. The petitioner cannot claim ignorance when the cheques were issued by his own son, nor can he portray himself as a stranger to the transaction. Accordingly, the petition is found to be devoid of merit and is dismissed. The trial court shall proceed with the complaint in accordance with law.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
20.12.2025
"Shaista-PS"