

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

CRM(M) 155/2024
CrLM (399/2024)

KULDEEP SINGH

...Petitioner/Appellant(s)

Through: Mr. Bilal Ahmad, Advocate

Vs.

KHAZIR MUHAMMAD BHAT

...Respondent(s)

Through: None

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
12.12.2025

1. The respondent had earlier been kept waiting, and even today, when the matter was taken up, none appeared on behalf of the respondent, whereas the record of the Trial Court has already been received.

2. Ld. Counsel for the petitioner submits that, insofar as the issue of territorial jurisdiction is concerned, the petitioner agrees with the observation of the Trial Court that in view of the law laid down by the Hon'ble Supreme Court in *Dashrath Rup Singh Rathod v. State of Maharashtra* and the subsequent amendment by way of Section 142-A of the Negotiable Instruments Act, 1881(the Act), the Court at Shopian lacked jurisdiction to continue with the complaint filed by the petitioner. To that extent, the impugned order is correct. However, instead of transferring the complaint to the Court of the Chief Judicial Magistrate, Pulwama, which was the competent Court having jurisdiction, the Trial Court erroneously directed the return of the complaint to the petitioner for presentation before the appropriate Court. Such a direction, it is submitted, has no sanction of law and amounts to a patent illegality. On the date when the amendment was

carried out in the Act, the complaint was already pending before the Trial Court and, therefore, in terms of the law declared in *Dashrath Rup Singh Rathod* (supra), particularly paragraph 22 thereof, the Trial Court was under a legal obligation to transfer the complaint along with the entire record to the Court having proper jurisdiction.

3. From the record, it appears that the petitioner had initiated proceedings under Section 138 of the Negotiable Instruments Act against the respondent by filing a complaint before the Court of the learned Chief Judicial Magistrate, Shopian, which was diarised as File No. 2216/M on 10-11-2012. The respondent appeared and denied the allegation of dishonour of the cheque. The matter was thereafter referred to mediation, which, however, did not fructify. The complainant led evidence, and the incriminating material was put to the respondent, who thereafter sought to lead evidence in defence. Subsequently, when the matter was listed for final hearing, the respondent moved an application under Section 177 of the Code of Criminal Procedure, read with Section 142(2) of the Negotiable Instruments Act, seeking the return of the complaint. The Trial Court, by virtue of the impugned order, directed the return of the complaint to the complainant on the ground that the cause of action had arisen within the territorial jurisdiction of the Court of Chief Judicial Magistrate, Pulwama.

4. Despite due notice of the present proceedings, the respondent has chosen not to appear. Considering the nature of the proceedings and the fact that the Trial Court record has already been received, the matter is liable to be decided in the absence of the respondent. The petitioner has invoked the inherent jurisdiction of this Court to quash the impugned order to the extent that it directs the return of the complaint. In *Dashrath Rup Singh Rathod v. State of Maharashtra & Anr.*, AIR 2014 SC 3519, a three-Judge Bench of the Hon'ble Supreme Court examined the issue of territorial jurisdiction under Section 138 of the Negotiable Instruments Act and considered earlier judgments in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC 510, *Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* (2001) 3 SCC 609, and *Harman Electronics Pvt. Ltd. v. National Panasonic India Pvt. Ltd.* (2009) 1 SCC 720. The Apex Court held that the jurisdiction to try an offence under

Section 138 of the Act is determined by the place where the cheque is dishonoured. Consequent thereto, the legislature amended the Act in 2015 by recasting Section 142(2), which provides that the offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction the bank branch of the payee or the drawee, as the case may be, is situated.

5. Taking note of the pendency of cases as on the date of the judgment in *Dashrath Rup Singh Rathod* (supra), the legislature further enacted Section 142-A of the Act to validate pending proceedings, providing that all cases transferred to the Court having jurisdiction under sub-section (2) of Section 142 shall be deemed to have been transferred under the Act as if the said provision had been in force at all material times. The combined effect of Sections 142(2) and 142-A is that all pending complaints under Section 138 of the Act stood statutorily transferred to the Court having territorial jurisdiction as per the amended provision. In the present case, the complaint had already reached an advanced stage, with evidence having been recorded and the matter being listed for final hearing, when the respondent sought the benefit of the amended law. The mandate of Section 142-A is unequivocal and overrides the provisions of the Code of Criminal Procedure. Therefore, the Trial Court was duty-bound to transfer the entire record to the Court of Chief Judicial Magistrate, Pulwama, instead of directing the return of the complaint to the complainant. The amendment does not intend to nullify or obliterate the proceedings already conducted, but only seeks to cure the jurisdictional defect by ensuring continuation of the complaint from the stage at which it stood transferred.

6. Even otherwise, the Code of Criminal Procedure does not contemplate the return of a criminal complaint once cognizance has been taken and evidence recorded. The complaint can only be allowed, dismissed, withdrawn, or transferred in accordance with the law. The Trial Court, therefore, failed to exercise its jurisdiction properly, warranting interference by this Court to secure the ends of justice.

7. Accordingly, while upholding the finding that the Court of Chief Judicial Magistrate, Pulwama, has territorial jurisdiction to entertain and proceed with the complaint and that the Trial Court at Shopian lacked such jurisdiction, the direction contained in the impugned order for return of the complaint to the petitioner is quashed. The complaint shall be deemed to have been transferred to the Court of Chief Judicial Magistrate, Pulwama, which shall proceed with the matter in accordance with law and dispose of the same expeditiously. Considering that the complaint has been pending since 10-11-2012 and in view of the mandate of Section 143 of the Negotiable Instruments Act requiring expeditious trial of such cases, this Court expects the transferee Court to make all endeavours to conclude the proceedings at the earliest. Registry to transmit the original record so received to the court of CJM Pulwama, along with a copy of this order for compliance and shall also send a copy of the order to the court of CJM Shopian for information. The petition is *disposed of* accordingly.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:

12.12.2025

Akshil Dev

Whether the order is speaking/reportable? Yes