

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

CRM(M) 264/2023

MUSHTAQ AHMAD KHANDAY **...Petitioner/Appellant(s)**

Through: Mr. S. M Ayoub, Advocate

Vs.

MUSHTAQ AHMAD DAR **...Respondent(s)**

Through: None

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

ORDER
20.12.2025

1. Nemo for respondent.

By way of the present petition, the petitioner has challenged the order dated **19-05-2023** passed by the Court of Munsiff/JMIC, Kangan, whereby cognizance was taken against the petitioner for commission of offence under Section 138 of the Negotiable Instruments Act. It is contended that the impugned order is ex facie contrary to law as it does not disclose the essential ingredients necessary for taking cognizance, thereby rendering all subsequent proceedings unsustainable in the eyes of law.

2. Heard learned counsel for the petitioner and perused the record. It transpires that upon presentation of the complaint under Section 138 of the N.I. Act, the learned Magistrate passed the following orders,

19-05-2023:

“This application/complaint has been presented by the learned counsel for the applicant in the open Court today. Be diarized. Issue notice to the other side. List the matter on 27-05-2023.”

27-05-2023:

“Complainant along with counsel present. Accused absent. Presiding Officer is attending training. Put up on 19-06-2023. Counsel for complainant received copy of the complaint in the open Court.”

3. The complainant had sought initiation of proceedings under Section 138 of the N.I. Act, which envisages that such proceedings can be invoked only when a cheque issued in discharge of a legally enforceable debt or liability is dishonoured and, thereafter, upon receipt of the memo of dishonour, the complainant issues a statutory demand notice to the accused within the period prescribed under the Act. Criminal liability under Section 138 cannot be attracted unless all the statutory ingredients are duly satisfied. Further, Section 142 of the N.I. Act mandates that cognizance of an offence under Section 138 must be taken strictly in accordance with the procedure prescribed therein, notwithstanding anything contained in the Code of Criminal Procedure.

4. It is now well settled that an order taking cognizance marks the commencement of criminal proceedings and necessarily requires compliance with the procedure laid down under the Code of Criminal Procedure. In addition to the requirements under the

Cr.P.C., the mandatory conditions enumerated under Section 138 read with Section 142 of the N.I. Act must also be fulfilled. Before taking cognizance, the Magistrate is required to apply judicial mind to the material placed on record and arrive at a prima facie satisfaction that the essential ingredients constituting the offence are made out.

5. In the present case, a bare perusal of the order dated **19-05-2023** reveals that it is a routine order merely taking the complaint on record, without recording any satisfaction as to the fulfilment of the statutory requirements under Section 138 of the N.I. Act. The order does not reflect application of mind to the material placed before the Court, nor does it disclose reasons warranting issuance of process against the accused. An order summoning an accused must be a reasoned or speaking order, demonstrating that the Magistrate has applied his mind to the facts and law applicable to the case and has taken cognizance of the offence besides calling upon the offender to show cause as to why not he be prosecuted for the alleged offence. The impugned order, however, falls short of this requirement.

6. Consequently, the contention raised by the petitioner carries legal force. The impugned orders dated **19-05-2023** and **27-05-2023** are unsustainable as they do not conform to the mandate of the Code of Criminal Procedure and the provisions of Sections 138 and 142 of the Negotiable Instruments Act. Accordingly, the petition is allowed, and the impugned orders are quashed, with liberty to the

learned Magistrate to pass a fresh order of taking cognizance of offence in accordance with law and thereafter proceed further as warranted.

7. A copy of this order be conveyed to the concerned Court for compliance.

8. The petition stands **disposed of accordingly**.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:

20.12.2025

Akshil Dev

Whether the order is speaking? Yes

Whether the order is reportable? No

