

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 1052/2025

Haji Ghulam Qadir

.... Petitioner/Appellant(s)

Through: - Mr. Farhan Mirza, Advocate

V/s

Charan Choudhary

.... Respondent(s)

Through: - Mr. Vikram Sharma, Sr. Advocate with
Mr. Zaheer Abbas Khan, Advocate

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

ORDER

13.02.2026

1. Heard learned counsel for the parties and perused the record of the Courts below.
2. The respondent-complainant instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "NI Act") before the Court of Chief Judicial Magistrate, Jammu, alleging that the petitioner had approached him for financial assistance in connection with a "Handling Contract" allotted at PEG, Birpur on 10.05.2018. It was pleaded that a sum of ₹18,86,000/- was advanced towards 50% of the bank guarantee and other incidental expenses, with the assurance that the same would be repaid through cheque.
3. In discharge of the aforesaid liability, the petitioner allegedly issued Cheque No. 046630 dated 26.10.2022 for ₹16,36,000/- drawn on J&K Bank, Shalamar Road, Jammu. The cheque, upon presentation, was dishonoured with the endorsement "Account Blocked". A statutory demand notice was

served, however, despite lapse of the prescribed period, payment was not made. Consequently, the complaint under Section 138 NI Act was filed.

4. The Trial Court, after recording the statement of the complainant on affidavit and perusing the documents annexed with the complaint, took cognizance of the offence in terms of order dated 19.12.2022 and directed issuance of process against the petitioner. The petitioner assailed the said order before the Sessions Court by way of Criminal Revision No. Cr. Rev/1331/2024. The revisional court dismissed the revision vide order dated 03.10.2025 on the ground that the revision petition was barred by limitation and that the petitioner had been appearing before the Trial Court without objection for a considerable period.

5. The principal contention urged on behalf of the petitioner before this Court is that the Trial Court failed to comply with the mandate of Section 202 Cr.P.C. as the petitioner was residing beyond the territorial jurisdiction of the Magistrate, and that the order taking cognizance reflects non-application of mind. It was further contended that the revisional court erred in dismissing the revision on the ground of limitation despite explanation of delay.

6. *Per contra*, learned counsel for the respondent submits that all statutory requirements under Sections 138 and 142 of the NI Act were duly complied with, that the Magistrate recorded the sworn statement of the complainant and examined the material placed on record before issuing process, and that the petitioner's challenge is a belated attempt to stall trial proceedings.

7. Having considered the rival submissions and examined the record, this Court finds that the complaint discloses all essential ingredients of the offence under Section 138 of the NI Act. The issuance of cheque in discharge of a legally enforceable debt, its presentation within validity, dishonour, issuance of statutory notice, and failure to make payment within the stipulated period stand *prima facie* established from the averments in the complaint and supporting documents.

8. In terms of Section 139 of the NI Act, there arises a statutory presumption that the cheque was issued for discharge of a legally enforceable debt or liability. The scope and ambit of such presumption have been elaborately considered by the Hon'ble Supreme Court in **2018 (8) SCC 165**, wherein it was held that the presumption under Section 139 of the Act, includes the existence of a legally enforceable debt and the burden lies upon the accused to rebut the same by raising a probable defence. Mere denial of liability does not suffice. In the present case, the petitioner has not placed any material on record at this stage to rebut the statutory presumption. The challenge is essentially directed against the order of cognizance.

9. As regards the contention based on Section 202 of the Code of Criminal Procedure, it is evident from the record that Ld. Magistrate examined the complaint, perused the documents placed on record, and recorded the sworn statement of the complainant by way of affidavit prior to issuance of process. The Hon'ble Supreme Court in *Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act, 1881, In Re*, **(2021) 16 SCC 116**, considered the scope and applicability of Section 202 Cr.P.C. in proceedings under Section 138 of the Negotiable Instruments Act.

The Court held that where the accused resides beyond the territorial jurisdiction of the Magistrate, the inquiry contemplated under Section 202 Cr.P.C. before issuance of summons cannot be dispensed with. However, the Apex Court further clarified that upon reading Section 145 of the Negotiable Instruments Act conjointly with Section 202 Cr.P.C., the requirement of examining witnesses on oath stands satisfied if the complainant's evidence is tendered by way of affidavit. It was held that where the Magistrate conducts the inquiry himself, it is not mandatory to examine witnesses orally in every case, and in appropriate cases, perusal of documents may suffice for forming satisfaction regarding sufficient grounds to proceed.

10. It is well settled that proceedings under Section 138 of the Negotiable Instruments Act are governed by the special procedure prescribed under the Act itself. Being a special statute, the Negotiable Instruments Act prevails over the general provisions of the Code of Criminal Procedure to the extent of inconsistency. Wherever the Act prescribes a specific mode, such as permitting evidence by affidavit under Section 145, the same governs the field. In the facts and circumstances of the present case, the learned Magistrate has complied with the statutory mandate, and the order taking cognizance does not suffer from any procedural irregularity, illegality, or non-application of mind.

11. The revisional court dismissed the revision petition on the ground of limitation, noting that the petitioner had been regularly appearing before the Trial Court and did not challenge the cognizance order within the prescribed time. Even assuming that the revisional court erred in dismissing the revision petition of the petitioner but even then, once the order of cognizance

is found to be legally sustainable, no interference would be warranted in exercise of supervisory or inherent jurisdiction.

12. The inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) is to be exercised sparingly and only where there is manifest illegality or abuse of process. No such circumstance is made out in the present case. The complaint discloses a *prima facie* offence and the petitioner shall have full opportunity during trial to rebut the presumption under Section 139 of the NI Act by leading appropriate evidence.

13. Consequently, this Court finds no merit in the petition. The order dated 19.12.2022 passed by the learned Trial Court taking cognizance and the order dated 03.10.2025 passed by the learned Sessions Judge, Jammu dismissing the revision petition do not warrant interference.

14. The petition is, accordingly, **dismissed**. The parties shall appear before the Trial Court on 10.03.2026 for further proceedings in accordance with law. Interim directions, if any, shall stand vacated. **Order accordingly.**

(SANJAY PARIHAR)
Judge

JAMMU
RAM MURTI
13.02.2026