

Serial No. 55
Regular Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 331/2025 , CrIM(795/2025).

PEERZADA ABASS AMIEN.

...Petitioner (s)

Through: Mr. Bhat Fayaz, Advocate
Ms. Nighat Amin, Advocate.

VERSUS

BILAL AHMAD MALIK.

Through: Mr. Owais Shafi, Advocate.

...Respondent(s)

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

ORDER
04-08-2026

01. The petitioner has challenged the complaint filed by the respondent against him before the Court of the learned Judicial Magistrate 1st Class, Pattan,(hereinafter referred as the 'trial Magistrate') alleging commission of an offence under Section 138 of the Negotiable Instruments Act. Challenge has also been thrown to the order dated 3rd of October 2023 passed by the learned trial Magistrate, whereby process has been issued against the petitioner.

02. Heard and considered.

03. It appears that the respondent filed a complaint against the petitioner before the learned trial Magistrate alleging commission of an offence under Section 138 of the Negotiable Instruments Act. Subject matter of the complaint is cheque bearing No. 12980 dated 13th of July 2023 for an amount of ₹8,00,000, drawn by the petitioner in favour of the respondent. The said cheque is stated to have been dishonoured when presented for encashment by the respondent before

his banker vide memo dated 22nd of August 2023 on account of insufficiency of funds. The respondent is further stated to have served a legal notice of demand upon the petitioner and, upon his failure to clear the cheque amount, the impugned complaint came to be filed before the learned trial Magistrate.

04. The petitioner has challenged the impugned complaint and the impugned order primarily on two grounds; firstly, that the petitioner is residing outside the territorial jurisdiction of the learned trial Magistrate and, therefore, it was mandatory for the learned trial Magistrate to undertake an enquiry under Section 202 of the Code of Criminal Procedure before issuing process against the petitioner. Secondly, that the notice of demand served by the respondent upon the petitioner is dated 5th of August 2023, whereas the memo of dishonour is dated 22nd of August 2023 and, therefore, the notice of demand is invalid in the eyes of law.

05. So far as the first contention of the petitioner is concerned, it is true that the petitioner/accused is residing beyond the territorial limits of learned trial Magistrate, therefore, the provisions contained in Section 202 of the Code of Criminal Procedure, which mandates holding of an enquiry before issuing process against the accused, is attracted to the facts of the present case.

06. A perusal of the trial court record would reveal that the learned trial Magistrate has recorded on oath the preliminary statement of the complainant and his one witness before proceeding to issue process against the petitioner. As per Section 202 of the Code of Criminal Procedure, it is permissible for a Magistrate to conduct the enquiry himself. Recording of the preliminary statements of the complainant and his witness on oath and considering the documentary evidence

produced by the complainant would satisfy the requirements of Section 202 of the Code of Criminal Procedure, in the facts and circumstances of the case

07. Apart from the above, even if it is assumed that the learned trial Magistrate has not conducted the enquiry strictly in terms of Section 202 of the Code of Criminal Procedure, still then, the proceedings which have been undertaken before the learned trial Magistrate would not get vitiated, for the reason that the petitioner has not taken objection regarding omission to hold enquiry under Section 202 of the Code of Criminal Procedure at the earliest possible opportunity. Instead, the petitioner has participated in the proceedings before the trial court and has approached this Court only after the trial of the case has almost been concluded. It is a settled law that if cognizance is taken in breach of a mandatory provision and the trial has progressed substantially, the order taking cognizance cannot be set aside unless the illegality is shown to have brought about a miscarriage of justice. (Refer *H.N Rishbud and Anr Vs. The State of Delhi*, AIR 1955 SC, 196.)

08. The purpose of incorporation of provision relating to mandatory enquiry in cases where the accused resides outside the territorial limits of a Magistrate is to prevent harassment of the accused residing outside the territorial limits of the magistrate on the basis of frivolous complaints. Once trial of a complaint has proceeded to its conclusion, the purpose sought to be achieved by directing enquiry under Section 202 of the Code of Criminal Procedure loses its significance, and at this stage, the omission to conduct mandatory enquiry under Section 202 of the Code of Criminal Procedure would not result in failure of justice. When we apply this logic to the facts of the present case, it can safely be stated that even if it is assumed that there has been omission on the part of the

learned trial magistrate to hold enquiry under Section 202 of the CrPC, the same has not resulted in miscarriage of justice. Thus, on this ground, the order whereby process has been issued cannot be set aside.

09. That takes us to the second ground urged by the learned counsel for the petitioner. In this regard, it is to be noted that the notice of demand is dated 5th of August 2023 but the same has been dispatched to the address of the petitioner on 5th of September 2023. This is clear from the postal receipt on record of the trial court file. A closer perusal of the notice of demand reveals that it appears to be a case of typographical error and not a case where the notice of demand was issued prior to receipt of information regarding dishonour of the cheque. This is clear from paragraph (7) of the notice of demand, wherein it is specifically indicated that information regarding dishonour of the cheque was received vide memo dated 22nd of August 2023. Thus, the ground urged by the petitioner is wholly misconceived.

10. For the foregoing reasons, I do not find any merit in the petition. The same is, accordingly, *dismissed* along with CrIM.

11. The parties are directed to appear before the learned trial Magistrate on 30th of August, 2026. In case the petitioner appears before the learned trial Magistrate on next date fixed, no coercive measures shall be taken by the trial Magistrate against him.

12. A copy of this order be sent to learned trial Magistrate forthwith.

(Sanjay Dhar)
Judge

SRINAGAR
04-08-2026
Showkat Khan