

Serial No. 23
Regular Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrIa(AS) 13/2023.

GHULAM NABI ANDRABI.

...Appellant (s)

Through: Mr. Waseem Shamas, Advocate.

VERSUS

ABDUL MAJEED LONE.

...Respondent(s)

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER

06-08-2026

01. Through the medium of the present appeal, the appellant has challenged order dated 7th of July, 2023, whereby the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act against the respondent came to be dismissed for non-prosecution, and the respondent-accused has been acquitted of the charges.

02. I have heard learned counsel for the appellant and perused the record of the case, including the trial court record.

03. It appears that the appellant had filed a complaint against the respondent before the Court of the learned Judicial Magistrate 1st Class, Handwara (hereinafter referred to as the "trial Magistrate"), alleging commission of an offence under Section 138 of the Negotiable Instruments Act. After recording the

preliminary evidence, the learned trial Magistrate issued process against the respondent in terms of order dated 22nd of June, 2017.

04. The minutes of proceedings would reveal that, respondent/accused after being summoned, put in his appearance before the trial Magistrate and sought time to enter into a compromise with the appellant-complainant. It further appears that, during the pendency of the complaint, the respondent-accused delivered a cheque for an amount of Rs. 50,000 to the appellant-complainant on 24th of December, 2021, and undertook to liquidate the balance cheque amount in instalments. Thereafter, on 16th of May, 2022, another amount of Rs. 4,00,000 was transferred by the respondent-accused into the account of the appellant.

05. While the complaint was pending for an amicable settlement between the parties, on 7th of July, 2023, when none of the parties were present before the Court, the learned trial Magistrate proceeded to dismiss the complaint for non-prosecution and non-appearance of the appellant-complainant.

06. Section 247(1) of the J&K CrPC, which is applicable to the present case, deals with a situation when the complainant does not appear on the date fixed by the Court. As per this provision, if the summons has been issued on a complaint and, on the date appointed for the appearance of the accused or on any date subsequent thereto, to which the hearing may be adjourned, the complainant does not appear, the Magistrate has to acquit the accused unless, for some reasons he thinks it proper to adjourn the hearing of the case to some other date.

07. Proviso to sub-section (1) of Section 247 of the J&K CrPC lays down that if the complainant is represented by a pleader or if the Magistrate is of the

opinion that personal appearance of the complainant is not necessary, his appearance may be dispensed with and the case may proceed with.

08. A plain reading of the provisions contained in Section 247 of the J&K CrPC, makes it clear that it is only in cases where the personal presence of the complainant before the court is absolutely necessary that the Magistrate can dismiss the complaint and acquit the accused. It is also clear that the Magistrate has the option of dispensing with the attendance of the complainant and to proceed with the case if the personal attendance of the complainant is not necessary.

09. Turning to the facts of the present case, the complaint before the learned trial Magistrate was pending for working out an amicable settlement between the parties. In fact, even the statement of the accused under Section 242 of the J&K CrPC was yet to be recorded. Thus there was no necessity of the complainant to remain personally present before the Court. The respondent-accused had in fact undertaken to pay the balance amount to the appellant-complainant in instalments, and it was for the respondent-accused to take the necessary steps to fulfil the commitment made by him before the Court. The accused had failed to appear before the Court on the date when the complaint came to be dismissed for non-prosecution. Therefore, it was not mandatory for the appellant-complainant to remain present before the Court on the date when the impugned order came to be passed by the learned trial Magistrate.

10. The learned trial Magistrate, while dismissing the complaint of the appellant and acquitting the respondent-accused, has not exercised its jurisdiction properly inasmuch as it has not considered the fact that presence of the

complainant before him was not necessary on the relevant date. The impugned order is, therefore, not sustainable in law.

11. For the foregoing reasons, the instant appeal is ***allowed*** and the impugned order dated 7th of July, 2023, passed by the learned trial Magistrate is set aside. The learned trial Magistrate is directed to proceed ahead with the complaint in accordance with law.

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

(Sanjay Dhar)
Judge

SRINAGAR
06-08-2026
Showkat Khan

