

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

CRM(M) 500/2023
CrIM(1194/2023)

SHAIK SHAFI DAR

...Petitioner(s)/appellant(s)

Through: Ms. Sara Nazeer, Advocate

Vs.

MUMTAZ AHMAD KHAN

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
21-07-2026

1. The petitioner has challenged the complaint filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 which is stated to be pending before the Court of learned Judicial Magistrate 1st Class, Trehgam. Challenge has also been thrown to the proceedings initiated against the petitioner pursuant to the aforesaid complaint.

2. No one has appeared on behalf of the respondent today.

3. I have heard learned counsel for the petitioner and perused the record of the case.

4. It appears that the respondent has filed a complaint against the petitioner before the learned Trial Magistrate alleging commission of offences under Section 138 of Negotiable Instruments Act. The subject matter of the impugned complaint is Cheque No. 083358 dated 20-12-2022 for an amount of Rs. 4.00 lakhs. As per the record of the trial court, the cheque was returned unpaid on the ground of insufficiency of funds/payment stopped by drawer, vide memo dated 28-12-2022. The record further shows that legal notice of the demand was issued on behalf of the respondent on

24-12-2022, which was sent through registered post at the address of the petitioner on 26-12-2022.

5. From the above, it is clear that respondent has issued the legal notice of demand upon the petitioner even before the dishonor of the cheque. As per Clause (b) of proviso to Section 138 of Negotiable Instruments Act, payee has to make a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque within 30 days of receipt of information by him from the bank regarding the return of the cheque as unpaid. In the instant case, it seems that respondent/complainant, has issued the notice of demand upon the petitioner without waiting for the information from the bank regarding return of the cheque as unpaid.

6. Thus, the provisions contained in Section 138 of Negotiable Instruments Act have not been adhered to by the respondent while prosecuting the petitioner. Service of legal notice of demand upon the drawer of a cheque and refusal to return the amount, inspite of receipt of legal notice of demand within 30 days, gives cause of action for a payee to file a complaint under Section 138 of the Negotiable Instruments Act, and it is only upon receipt of information regarding dishonor of the cheque that such legal notice of demand is to be issued by the payee of the cheque. In the instant case, the respondent-complainant has, without getting information about the fate of the cheque, rushed to serve notice of demand upon the accused. Thus, an essential ingredient of offence under Section 138 of the Negotiable Instruments Act has not been fulfilled in the present case, as such, it was not open to the learned Trial Magistrate to issue process against the petitioner on the basis of the impugned complaint.

7. For the foregoing reasons, the petition is allowed, and the impugned complaint and the proceedings initiated thereon are quashed.

(SANJAY DHAR)
JUDGE

SRINAGAR
21-07-2026
Aamir

