

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

CRM(M) No. 14/2023

Abdul Majeed Mir

...Appellant/Petitioner(s)

Through: Mr. Sheikh Manzoor, Advocate

Vs.

Ghulam Rasool Wani

...Respondent(s)

Through: Mr. L.A. Latief, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

09.07.2025

1. Cognizance taken and process issued by the Trial Court on a complaint under Section 138 of Negotiable Instruments Act titled as "*Gh. Rasool Wani vs. Abdul Majeed Mir*", and also the complaint are sought to be challenged and set-aside through the medium of this petition filed under Section 482 of Cr.P.C.
2. Heard learned counsel for the parties and considered the matter.
3. Learned counsel for petitioner states that plain reading of complaint as also statements of the complainant and his witnesses recorded during investigation of FIR No.17/2015 do not reveal any allegation that there exists a legally recoverable debt from the accused. In absence of such existence of the legally recoverable debt, Section 138 of the Act itself is not attracted. When such being the case, there cannot be any presumption under Negotiable Instruments Act, particularly under Section 139 of the Act. When the presumption under Section 139 of Negotiable Instruments Act cannot be raised in favour of the complainant and if it is not shown *ex facie* in the face of the complaint averments, that there exists any legally recoverable debt, then ingredients of Section 138 of the Act are not attracted and moreover there is a clear contradiction between the allegation made by the respondent before the Court in Section 138-complaint and

statement recorded before Magistrate and police during investigation of the FIR which causes serious doubt about the stand of the respondent regarding the nature of the transaction, therefore, on that ground, the complaint itself is liable to be quashed.

4. Additionally, learned counsel for the petitioner would submit that the respondent has also filed a complaint before Crime Branch. He further submits that so far as the issuance of the cheque is concerned it is not disputed. However, it is submitted by him that after registration of the FIR, petitioner was made to sign the cheque.
5. Perusal of the record on the file as also petition in hand would reveal that there is no denial on the part of petitioner as regards issuance of cheque. When cheque was dishonoured, demand notice was issued and thereafter complaint filed by respondent which was later on in view of order dated 15.09.2020 passed in CRTA no.48/2018 by a Bench of this Court transferred to the Trial Court. Issuance of cheque by petitioner is not disputed. Presentation of cheque by respondent is not disputed. Dishonour of cheque by concerned bank is not disputed. Issuance of demand notice is not disputed. Therefore, all that has been done by the Trial Court was to follow the procedure as prescribed under the Act and before taking cognizance had to see as to whether the provisions of the Act as contained in Section 138 of the Act were fulfilled. Once the provisions were fulfilled the Trial Court could have taken cognizance and issued process. As far as instant petition is concerned, no fault is and/or can be pointed out or shown committed by the Trial Court. In such circumstances, impugned order does not call for any interference.

6. In view of above, instant petition is dismissed with connected CM(s).

Interim direction, if any, shall stand vacated.

7. It is made clear that petitioner shall be at liberty to produce his defence/ evidence before the Trial Court during the trial. The Trial Court shall take into consideration defense/evidence being produced before it by petitioner and pass orders accordingly.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
09.07.2025
Shabroz

