S. No. 01
Regular Cause List

INTHE HIGH COURT 0F JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) 8/2026
CrlM(14/2026) c/w
CRM(M) 638/2025, CRM(M) 4/2026, CRM(M) 5/2026,
CRM(M) 6/2026

JAMSHED MUSHTAK KAK

…Appellant(s)/Petitioner(s)

Through: Ms. Rutba Khan, Advocate

Vs.

FAROOQ AHMED WANI AND ANR.

...Respondent(s)

Through:

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

ORDER
27.10.2026

1. Heard learned counsel for the petitioners at length and perused the orders impugned, as well as the material available on record.
2. The present five petitions arise out of proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the (*"NI Act"*), on the basis of complaints originally instituted by Mohammad Sidiq Wani. During the pendency of the said proceedings, the original complainant passed away, whereupon his legal heirs moved applications before the Trial Court seeking permission to prosecute the complaints on behalf of the deceased complainant. The Trial Court, after affording an opportunity of hearing to the accused, Jamsheed Mushtaq Kak, and upon consideration of the applicable legal precedents, allowed the applications and permitted Farooq Ahmad Wani and Sajad Ahmad Wani, sons of the deceased complainant, to continue prosecution of the

complaints against the accused. Aggrieved by the said orders, the accused has approached this Court through the present petitions.

3. The principal contention urged by learned counsel for the petitioners is that the Trial Court has placed reliance upon judicial precedents which, according to him, have no application to the facts and circumstances of the present cases. It is further contended that notwithstanding the objections raised by the accused regarding the locus standi of the proposed legal representatives, the Trial Court has erroneously permitted them to prosecute the complaints. It is, therefore, submitted that the orders impugned suffer from legal infirmity and warrant interference by this Court.

4. Having heard learned counsel for the petitioners and examined the objections filed by the accused before the Trial Court, this Court finds that the contention regarding the locus standi of the legal representatives is wholly misconceived. A perusal of the objections reveals that no specific challenge was raised to the status or entitlement of Farooq Ahmad Wani and Sajad Ahmad Wani to prosecute the complaints as legal heirs of the deceased complainant. The objections were essentially confined to general assertions that substitution of legal representatives was unknown to law and that the applications had been filed mechanically.

5. Significantly, the accused did not dispute, in the objections filed before the Trial Court, the status of Farooq Ahmad Wani and Sajad Ahmad Wani as legal heirs of the deceased complainant, nor was any legally sustainable ground urged to question their entitlement to seek permission

to continue the proceedings. The challenge to their locus standi, sought to be raised in the present petitions, is thus an afterthought and is unsupported by any substantial legal foundation.

6. The Trial Court has examined the controversy in its proper perspective and has rightly observed that the NI Act contains no provision which expressly prohibits the legal heirs of a deceased payee or holder in due course from pursuing proceedings under Section 138 of the Act. The legal heirs of a deceased holder in due course succeed to his estate by operation of law and inheritance and are, therefore, entitled, subject to compliance with the requirements of law, to pursue remedies arising out of the cheque in question. The right to recover the amount legally due to the deceased forms part of the estate inherited by his legal representatives.

7. The Trial Court has also taken note of the settled legal position that, upon the death of the payee, his legal heirs may step into his shoes and, subject to fulfilment of the requisite legal formalities, institute and prosecute a complaint under Section 138 of the NI Act. Learned counsel for the petitioners has sought to distinguish the authorities relied upon by the Trial Court on the ground that those decisions pertain to cases where the payee had died before institution of the complaint, whereas, in the present cases, the complaints had already been instituted and were pending adjudication at the time of the complainant's death.

8. The aforesaid distinction, however, is without any substance. If the legal heirs of a deceased payee are competent, in accordance with law, to institute a complaint under Section 138 of the NI Act after the death of

the payee, there is no conceivable reason why they should be precluded from continuing a complaint validly instituted by the payee during his lifetime. The death of the complainant during the pendency of the proceedings cannot, by itself, extinguish the right to prosecute the complaint. The same legal principle which enables the legal heirs to initiate proceedings after the death of the payee would, with equal force, permit them to continue proceedings already instituted, subject, of course, to the permission of the competent Court.

9. It is also pertinent to observe that Section 139 of the NI Act raises a statutory presumption in favour of the holder of the cheque that the same was received towards discharge, in whole or in part, of a debt or other legally enforceable liability. The presumption is, undoubtedly, rebuttable, and it remains open to the accused to displace the same in accordance with law. However, the accused cannot be permitted to frustrate the proceedings merely by raising technical objections founded upon the death of the original complainant, particularly when the law does not prohibit continuation of such proceedings by his legal heirs with the permission of the Court. The substantive defence available to the accused shall remain open for consideration by the Trial Court at the appropriate stage.

10. In view of the foregoing discussion, this Court is of the considered opinion that the legal heirs of a deceased payee or holder in due course, who are competent in law to institute a complaint under Section 138 of the NI Act, cannot be denied permission to continue a complaint merely because the original complainant died during its pendency. Such

continuation is, however, subject to the permission of the Court concerned. In the present cases, the Trial Court has exercised its jurisdiction judiciously by permitting Farooq Ahmad Wani and Sajad Ahmad Wani, sons of the deceased complainant, to prosecute the pending complaints. The orders impugned are founded upon a proper appreciation of the legal position and do not suffer from any illegality, perversity, material irregularity or jurisdictional error warranting interference by this Court.

11. For the reasons recorded hereinabove, this Court finds no merit in the present petitions. The same are, accordingly, **dismissed**. The Trial Court shall proceed with the complaints and bring the proceedings to their logical conclusion, expeditiously and strictly in accordance with law, uninfluenced by any observation made herein touching upon the merits of the complaints.

12. **Dismissed along with all connected petitions.**

13. Interim direction(s), if any, shall stand vacated.

(SANJAY PARIHAR)
JUDGE

Srinagar
27.10.2026
"Imtiyaz"

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No

Imtiyaz Ul Gani
I attest to the accuracy and
authenticity of this document

28.10.2026 15:57