S. No. **07**
Regular Cause List

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

CrlM No. 2020/2026 In
CRM(M) No. 890/2026

Irfan Fayaz …Appellant/Petitioner(s)

Through: Mr. Waseem Shamus, Advocate

Vs.

Mohammad Ashraf Dhobi ...Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

O R D E R
27.10.2026

1. The petitioner, being aggrieved by the proceedings initiated against him pursuant to a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "NI Act"), and, in particular, the order dated 17.06.2026, whereby cognizance of the alleged offence has been taken by the trial Court, has invoked the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking quashment of the aforesaid order and the proceedings emanating therefrom.

2. The principal grievance projected by the petitioner is that he had neither borrowed any amount from the respondent nor issued or delivered the cheque in question to him towards the discharge of any legally enforceable debt or liability.

3. It is contended that the complaint has been instituted on the basis of a cheque which was never issued by the petitioner in favour of the respondent and that the trial Court, without appreciating the material

circumstances of the case, has erroneously proceeded to take cognizance of the alleged offence.

4. It is further contended that the bank account on which the cheque in question was drawn had already been closed in the year 2016. According to the petitioner, the respondent has misused an old cheque after a considerable lapse of time by inserting a subsequent date thereon and has sought to create a fictitious liability against him.

5. It is also the specific case of the petitioner that the cheque had gone missing and was allegedly stolen, in respect whereof a report had been lodged with the police station concerned. The learned trial Court, it is urged, failed to accord due consideration to these circumstances while passing the impugned order.

6. Another ground urged in support of the petition is that the mandatory statutory requirements governing the institution and maintainability of a complaint under Section 138 of the NI Act had not been complied with and, consequently, the order taking cognizance is legally unsustainable.

7. Heard the counsel for the petitioner and perused the material placed on record, including the complaint, the impugned order and the documents annexed with the petition.

8. A perusal of the complaint reveals that the respondent has alleged that the father of the petitioner had obtained an amount of Rs. 50,00,000/- (Rupees Fifty Lakh) from him for business purposes, with an assurance that the amount would be repaid along with interest and profit. It is further alleged that, towards the discharge of the aforesaid liability, the petitioner issued cheque bearing No. 326613 dated 05.08.2023 on behalf of his father. Upon presentation of the cheque for encashment, the respondent was informed by the bank that the account on which the

cheque had been drawn stood closed. According to the complainant, these circumstances disclosed the involvement of the petitioner in the transaction and, accordingly, after issuing the requisite statutory notice, the respondent instituted the complaint under Section 138 of the NI Act.

9. The record further reveals that the trial Court had initially taken cognizance of the offence and issued process against the petitioner on 11.10.2023. The said order was subsequently set aside by the Sessions Judge, Budgam, vide order dated 30.05.2025, whereafter the complaint came to be transferred to the Court of Sub-Judge, Chadoora. The trial Court, upon reconsideration of the matter and after hearing the petitioner, proceeded to take cognizance of the offence under Section 138 of the NI Act vide order dated 17.06.2026, which is the subject matter of challenge in the present petition.

10. The principal defence raised by the petitioner before the trial Court, and reiterated before this Court, is that the cheque forming the basis of the complaint had been lost or stolen and that a report in this regard had been lodged with the police. On this premise, it is contended that the respondent had misused the cheque and sought to fasten upon the petitioner a liability which, according to him, never existed. The petitioner has, therefore, questioned the very foundation of the complaint by disputing the issuance of the cheque as well as the existence of any legally enforceable debt or liability.

11. Learned counsel for the petitioner has further submitted that the petitioner is neither the signatory to the cheque nor had he filled in the date appearing thereon. It is urged that the cheque pertains to the year 2016, when the bank account concerned had already been closed, and that the date 05.08.2023 was subsequently inserted thereon by the respondent.

In support of this contention, reliance has been placed upon Annexure-3, which, according to the petitioner, establishes that the bank account on which the cheque was drawn stood closed as on 19.11.2016.

12. The aforesaid submissions, however, essentially raise disputed questions of fact which cannot appropriately be adjudicated upon in the exercise of inherent jurisdiction at this stage. Whether the cheque actually pertains to the year 2016, whether the date appearing thereon was subsequently inserted without authority, whether the cheque was lost or stolen, and whether it was issued towards the discharge of a legally enforceable debt or liability are all matters which require examination on the basis of evidence. The cheque forming the subject matter of the complaint admittedly bears the date 05.08.2023. The correctness or otherwise of the petitioner's assertion that the said date was subsequently inserted is a matter to be established before the trial Court.

13. There is yet another circumstance which assumes significance at this stage. While the petitioner disputes having signed or issued the cheque in question, he simultaneously asserts that the same had gone missing and was subsequently misused by the respondent. More importantly, the record indicates that the complaint proceedings had been initiated on 11.10.2023, whereas the report regarding the alleged loss of the cheque was lodged on 12.10.2023, that is, after the initiation of the complaint proceedings. The timing of the said report is a circumstance which may have a bearing on the appreciation of the defence set up by the petitioner. However, its evidentiary value, as also the explanation, if any, offered by the petitioner, would necessarily fall within the domain of the trial Court and cannot be conclusively determined in the present proceedings.

14. It is pertinent to observe that Section 139 of the NI Act incorporates a statutory presumption in favour of the holder of a cheque that the same was received towards the discharge, in whole or in part, of a debt or other liability. The said presumption is, however, rebuttable in nature. Once the foundational facts necessary for attracting the presumption are established, the burden shifts upon the accused to rebut it in accordance with law. The accused is entitled to do so by relying upon the material brought on record by the complainant or by adducing evidence in support of his defence.

15. In the present case, the petitioner disputes the execution and issuance of the cheque itself and also denies the existence of any legally enforceable liability. These contentions, though available to him as defenses, cannot be accepted as conclusively established merely on the basis of the assertions made in the present petition. Their determination would require an examination of the evidence to be led by the parties before the learned trial Court.

16. It is well settled that, at the stage of taking cognizance and issuance of process, the Magistrate is required to ascertain whether the allegations contained in the complaint, read with the material placed in support thereof, prima facie disclose the commission of an offence and satisfy the statutory requirements contemplated under Sections 138 and 142 of the NI Act. At this preliminary stage, the Court is neither required to undertake a meticulous appreciation of the evidence nor to adjudicate upon the probable defence of the accused as if conducting a full-fledged trial. The exercise of inherent powers under Section 528 of the BNSS is likewise not intended to substitute the trial process or to resolve disputed questions of fact requiring evidence.

17. In the present case, the complaint contains allegations regarding the issuance of the cheque towards the discharge of a liability, its presentation before the bank, its return on account of closure of the bank account, and the issuance of statutory notice before institution of the complaint. No specific material has been brought to the notice of this Court to establish that the complaint is barred by limitation or that the statutory notice suffers from any defect rendering the proceedings unsustainable. The contention that the bank account had been closed in the year 2016, by itself, does not conclusively establish that the cheque was not issued on the date mentioned therein or that the complaint is otherwise not maintainable. Similarly, the plea that the cheque had been lost or stolen, or that the petitioner had neither signed nor issued it, involves factual controversies which cannot be resolved without evidence.

18. The petitioner may ultimately succeed in establishing his defence before the learned trial Court. That possibility, however, cannot by itself furnish a ground for quashing the proceedings at their inception when the complaint, on its face, discloses the essential ingredients of the alleged offence. This Court, while exercising jurisdiction under Section 528 of the BNSS, cannot assume the role of the trial Court by embarking upon an enquiry into the genuineness of the cheque, the circumstances surrounding its issuance, or the existence of the liability alleged by the complainant. All such questions are required to be determined in accordance with law during trial, after affording the parties an adequate opportunity to substantiate their respective stands.

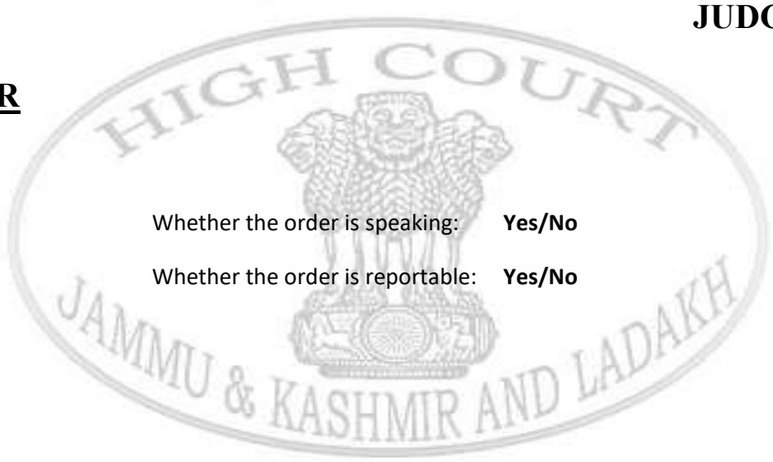
19. In view of the foregoing discussion, this Court finds no ground warranting interference with the impugned order dated 17.06.2026 or for

exercise of the inherent jurisdiction under Section 528 of the BNSS to quash the proceedings arising out of the complaint under Section 138 of the NI Act.

20. The petition, being devoid of merit, is accordingly **dismissed**, leaving it open to the petitioner to raise all such pleas and defenses as may be available to him under law before the Trial Court.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
27.10.2026
Shabroz



Whether the order is speaking: **Yes/No**

Whether the order is reportable: **Yes/No**