S. No.3
Regular list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(M) 494/2026 CM(7446/2026)

SHEERAZ AHMAD RAINA …Petitioner(s)/Appellant(s)

Through: Ms. Mohsina Mir, Advocate.

Vs.

AKHTER HUSSAIN WANI ...Respondent(s)

Through:

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI JUDGE

ORDER
03.11.2026

1. The petitioner-Sheeraz Ahmad Raina is an accused in a criminal case initiated on a complaint preferred by the respondent-Akhter Hussain Wani, before the Court of learned Chief Judicial Magistrate (CJM) Shopian, on file No. **15-A** instituted on **27.05.2021**.

2. The criminal complaint by the respondent against the petitioner is with respect to alleged commission of offence under Section 138 of Negotiable Instruments Act, 1881.

3. The said complaint of the respondent against the petitioner had, in fact, resulted in judgment of conviction dated **16.11.2023** passed by Chief Judicial Magistrate (CJM) Shopian, holding the petitioner guilty of commission of offence with respect to dishonouring of cheque/s.

4. Against said judgment of conviction, the petitioner had preferred an appeal on **file No. 65/CR of 2023** before the court of Principal Sessions Judge, Shopian, which resulted in setting aside of the judgment of conviction read with order of sentence dated **16.11.2023** with the

remand of matter to the trial court of Chief Judicial Magistrate Shopian, with a direction to restore the complaint to its original number and stage, and thereupon afford an opportunity of being heard including an opportunity to advance arguments in his defence to the petitioner as an accused and then decide the complaint afresh in accordance with law on its merits.

5. The appellate court's judgment dated **21.08.2026** thus brought the complaint back to the trial court of Chief Judicial Magistrate (CJM), Shopian to be taken up for proceedings from the stage where the petitioner as an accused was meant to be heard.

6. In the first round of the trial of the criminal complaint, the trial court of learned Chief Judicial Magistrate (CJM), Shopian had called upon the petitioner as an accused to lead his evidence in terms of an Order dated **16.08.2023** whereas by virtue of an order dated **04.11.2023**, the right to lead evidence in defence of the petitioner was closed, whereupon the judgment of conviction dated **16.11.2023** had come to take place.

7. Consequent upon the remand of the matter made by the Principal Sessions Judge, Shopian in terms of the judgment dated **21.08.2026**, the petitioner came to invoke section 311 of the Code of Criminal Procedure 1973 by making an application on **21.09.2026**. The petitioner is said to have accompanied list of witnesses along with his application whom the petitioner intended to be summoned for examination as a witness in his defence.

8. The said application of the petitioner has come to suffer rejection vide an order dated **21.09.2026** passed by court of Chief Judicial Magistrate

(CJM), Shopian, by taking a very hyper-technical view of the expression used by the learned Principal Sessions Judge, Shopian, in his judgment dated **21.08.2026,** holding that opportunity of being heard intended to be granted to the petitioner is meant to be hearing and not with respect to leading of evidence, and, therefore, did not consider the application of the petitioner on its merit.

9. It is against the aforesaid outcome that the petitioner has come forward with the present petition invoking supervisory jurisdiction of this Court under article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (akin to Section 528 of Bhartiya Nagarik Suraksha Sanhita) BNSS, 2023.

10. Trial of a criminal complaint for commission of offence under section 138 of the Negotiable Instruments Act 1881 is meant to be governed by trial of summons cases by Magistrates as provided under Chapter XXII of the Code of Criminal Procedure, 1973 (akin to Chapter 21 of Bhartiya Nagarik Suraksha Sanhita) BNSS 2023.

11. Section 254 of Code of Criminal Procedure, 1973, deals with hearing of an accused in defence by co-relating it to the requirement of taking of all such evidence as an accused wishes to produce in his defence. Section 277 of the BNSS, 2023 follows the same text and context of hearing of an accused in defence by reserving in his/her favour right to produce the evidence.

12. This Court is under no iota of doubt that the Court of Chief Judicial Magistrate, (CJM) Shopian, has acted with a very literal application of mind by drawing a very misplaced understanding of the remand

direction of the Court of Principal Sessions Judge, Shopian, in its judgment dated 21st August, 2026.

13. If it would have been a matter of just oral hearing of the petitioner as an accused, then the same would have been done by the Court of Principal Sessions Judge, Shopian, itself in hearing the appeal of the appellant as a convict without burdening the judgment dated 21st August, 2026 with a direction to remand the matter back to the trial court of Chief Judicial Magistrate, (CJM) Shopian.

14. Obviously, what was meant by learned Principal Sessions Judge, Shopian, is that the petitioner's right to lead evidence was closed by interplay of two or three dates, that too when on one date the counsel for the petitioner was absent, on the next date, the learned Presiding Officer of the Court of Chief Judicial Magistrate (CJM), Shopian was on leave, and on the eventful date of 4th November, 2023, in the absence of the parties as well as their counsel in the complaint, an order closing the evidence of the petitioner was passed and the matter was posted for final orders/judgment which came to be delivered on 16th November, 2023.

15. In matters of procedural law, particularly those dealing with adjudication of civil and criminal matters, Judges/Magistrates are supposed to invest due application of mind in citing the relevant provisions in an order/judgment and then by referring to the same to justify the conclusion as to why a particular adjudication is being made in the context of a given case.

16. In the present case, the learned Chief Judicial Magistrate (CJM), Shopian seems to have acted as a layman handling a decision-making process without bearing any relationship with the provisions of law. Otherwise, the impugned order of the learned Chief Judicial Magistrate (CJM), Shopian, would have at least referred to the provisions of law in the context whereof the petitioner's right to seek examination of his witnesses in defence was intended to be dealt with by the learned Chief Judicial Magistrate (CJM), Shopian.

17. There is, thus, an inherent illegality and infirmity in the order of the learned Chief Judicial Magistrate (CJM), Shopian, which constrains this Court to set aside said order by directing the learned Chief Judicial Magistrate (CJM), Shopian to hear the application of the petitioner afresh in the context of the list of witnesses, if any, submitted by the petitioner, and then take a call as to whether to allow the petitioner the right of hearing, as envisaged by the court of Principal Sessions Judge, Shopian in the judgment dated 21st August, 2026.

18. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR
03.11.2026
Hilal Ahmad