HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) No. 206/2023 C/w CRM(M) No. 207/2023

Reserved on: 09.10.2026
Pronounced on: 28.10.2026
Uploaded on: 28.10.2026
Whether the operative part or full judgement is pronounced: Full

Yudhvir Singh Katoch

...Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate

Vs.

Basharat Khan

...Respondent(s)

Through: Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate

CORAM:

HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

JUDGEMENT

1. This order shall govern the disposal of both the petitions, which involve common questions of fact and law and have been clubbed together and taken up for joint disposal.

2. The petitioner, Yudhvir Singh Katoch, has filed the instant petitions under Section 482 Cr.P.C., seeking quashment of the complaints bearing Nos. 126/Comp./M, titled *"Mohsin Khan v. Yudhvir Singh Katoch,"* and 127/Comp./M, titled *"Basharat Khan v. Yudhvir Singh Katoch,"* pending

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before the Court of learned Judicial Magistrate 1st Class (Sub-Registrar), Srinagar, along with the respective orders dated 30.07.2022, whereby cognizance was taken against him for the commission of offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act"). The complaints have been instituted by the two respondents, who are father and son, on the basis of three cheques issued in favour of each of them.

3. The petitioner, who happens to be a property dealer and has challenged the maintainability of the complaints and the consequential proceedings primarily on the grounds that the cheques in question were presented on different dates, whereas a composite demand notice was issued in respect of all three cheques in each complaint, which, according to him, is contrary to the mandate of the provisions of Section 138 of the N.I. Act. It is further contended that the statutory notice in respect of one of the cheques in each case was not issued within the prescribed period of thirty days from the date of receipt of

information regarding dishonour thereof. In respect of the remaining cheques, the complaints have been instituted prematurely before expiry of the statutory period of fifteen days from the date of receipt of the demand notices. The petitioner also contends that a part of the amounts covered by the cheques had already been paid, which fact was not taken into consideration and the cheques were presented for encashment of entire amount. It is, accordingly, urged that the learned Trial Magistrate fell into error in taking cognizance and issuing process against the petitioner. Petitioner has also questioned the proceedings on the ground that the procedure contemplated under Section 202 Cr.P.C. was not followed, despite he being a resident of Udhampur. It is, therefore, contended that continuation of the proceedings would be an abuse of the process of the Court and hence warrants intervention of this Court in exercise of its inherent jurisdiction.

4. Per contra, the case set up by the respondents is that the petitioner approached them and offered to sell a plot of land situated at Nagrota,

Udhampur. Since one of their relatives already owned a house in the vicinity so both respondents agreed to purchase the plot in equal proportion for a total sale consideration of Rs. 83.00 lakhs, which the petitioner insisted upon receiving in cash. In furtherance of the proposed transaction, respondent Basharat Khan paid an amount of Rs. 12.00 lakhs in cash to the petitioner at his residence, whereas his son respondent Mohsin Khan, paid an amount of Rs. 16.00 lakhs in the similar manner. However, after some time, the respondents came to know that a dispute existed with respect to the land in question and that a civil suit concerning the same was pending. Consequently, the transaction was cancelled, and the petitioner undertook to refund the amounts received by him as advance.

5. It is further the case of the respondents that, towards repayment of the aforesaid amounts, the petitioner issued three cheques in favour of respondent-Basharat Khan, bearing No. 005169 dated 29.04.2022 for Rs. 4.00 lakhs, No. 022193 dated 29.04.2022 for Rs. 3.00 lakhs and No.

022194 dated 29.04.2022 for Rs. 2.50 lakhs, drawn on J&K Bank, Jaganoo Morh Branch, Udhampur, and Union Bank of India, Udhampur Branch respectively. Similarly, the petitioner issued three cheques in favour of respondent-Mohsin Khan, bearing No. 005170 dated 29.04.2022 for Rs. 4.00 lakhs, payable at J&K Bank, Jaganoo Morh Branch, Udhampur, No. 022192 dated 29.04.2022 for Rs. 3.00 lakhs and No. 022195 dated 29.04.2022 for Rs. 2.50 lakhs, both payable at Union Bank of India, Udhampur Branch.

6. The respondents have further claimed that, in order to gain their confidence, the petitioner transferred an amount of Rs. 2.00 lakhs to respondent Basharat Khan on 31.05.2022 through RTGS and assured him that the remaining amount of Rs. 50,000/- would be transferred within a few days. Likewise, the petitioner is stated to have transferred certain amounts to respondent-Mohsin Khan on different dates through UPI/Google Pay, M-Pay and RTGS. The particulars of the said transactions, as set out

in the pleadings, include transfers stated to have been made on 29.04.2020, 23.05.2022 and 14.06.2022. According to the respondents, these transfers were towards repayment of the amounts owed by the petitioner over and above the amounts of the cheques in question. They, therefore, disputed the petitioner's contention that the amounts transferred constituted part-payment of the amounts covered by the cheques.

7. The record reveals that the petitioner was examined by the learned Trial Court with reference to the allegations contained in the complaints on 02.03.2023, before he instituted the instant petitions on 11.05.2023. During his examination, the petitioner did not dispute the issuance of the cheques or his signatures thereon. He, however, claimed that the cheques had been issued as security towards some liability, without clarifying the nature and extent of such liability or the transaction in respect of which the cheques were allegedly issued as security.

8. The record further reveals that the respondents pleaded that the first cheque was returned unpaid

on 08.06.2022, whereas the remaining two cheques were returned unpaid on 04.07.2022. Thereafter, a composite demand notice in respect of all three cheques was issued on 07.07.2022. The petitioner did not respond to the said notice and has denied its receipt, notwithstanding the fact that the respondents have placed the relevant postal tracking reports on record. The said reports are stated to indicate that the notices were sent through registered post and delivered to the addressee on 15.07.2022 at 1.10 PM.

9. Learned counsel appearing for the petitioner, while reiterating the grounds urged in the petitions, has vehemently argued that the complaints are premature, having been instituted on the fifteenth day, whereas the petitioner was entitled to the statutory period of fifteen days from the date of receipt of the demand notice for making payment. It is, therefore, contended that the learned Trial Magistrate could not have proceeded to take cognizance of the alleged offences before expiry of the said period. Learned counsel has further submitted that a part of the

amounts covered by the cheques had already been paid and that the entire amounts represented by the cheques were, therefore, not outstanding. It is argued that the learned Trial Court has failed to take these material aspects into consideration and, as such, has fallen into error in taking cognizance and issuing process against the petitioner. It is further contended that the statutory requirements under Section 138 of the N.I. Act have not been duly complied with and that the procedure contemplated under Section 202 Cr.P.C. was also not followed. On these grounds, learned counsel submits that continuation of the proceedings would amount to an abuse of the process of the Court and seeks quashment of both the complaints and the orders impugned therein.

10. Learned counsel appearing for the respondents, on the other hand, has controverted the submissions advanced on behalf of the petitioner and contended that the instant petitions are an afterthought, intended to prolong the proceedings. It is submitted that the petitioner has already

succeeded in prolonging the trial of the complaints and has kept the respondents embroiled in litigation for more than three years. Learned counsel has further argued that the amounts transferred through RTGS, Google Pay etc. were actually paid towards repayment of the balance amounts owed by the petitioner to the respondents and not towards discharge of the liabilities represented by the cheques in question. It is, accordingly, contended that the plea of part-payment of the cheque amounts is misconceived. Learned counsel for the respondents has further submitted that the complaints were instituted after expiry of the statutory period prescribed under Section 138 of the N.I. Act and that the impugned orders do not suffer from any illegality or jurisdictional error warranting interference by this Court. Learned senior counsel has, therefore, prayed for dismissal of both the petitions.

11. Heard learned counsel for the parties and perused the material available on record.

12. A careful examination of the records of the two complaints reveals that the respondents, in both

the complaints, have specifically stated the amounts advanced by them towards part payment of the sale consideration, as agreed between the parties. They have also furnished details of the amounts sought to be paid through cheques, the amounts transferred through Google Pay, RTGS, etc., as well as the assurances allegedly extended by the petitioner towards re-payment of the balance amounts of consideration. The respondents have thus provided a detailed breakup of the amounts due and the payments allegedly made assurance/assured. However, the petitioner has not placed any material on record to substantiate his contention that the amounts transferred through Google Pay, RTGS, etc., were actually paid towards part payment of the amounts covered by the cheques. The petitioner neither responded to the demand notices nor has raised any such a plea before the Trial Court when examined with reference to the allegations contained in the two complaints. In these circumstances, the plea now sought to be raised is apparently to be an afterthought, advanced

with a view to invoking the jurisdiction of this Court. The said contention, therefore, does not merit acceptance.

13. The next contention raised on behalf of the petitioner is that the complaints were instituted before the expiry of the statutory period of fifteen days from the service of the demand notices. In this regard, a perusal of the tracking reports pertaining to the two registered letters through which the demand notices were dispatched reveals that the same were delivered on 15.07.2022 at 1:10 PM. Reckoning the statutory period from the date of service of the notices, the petitioner was required to make payment within fifteen days thereof, i.e. by 30.07.2022. However, both the complaints came to be presented before the learned Chief Judicial Magistrate, Srinagar on 29.07.2022 who, in turn, assigned the same to the learned Judicial Magistrate 1st Class (Sub-Registrar), Srinagar on the same day, but were listed before the said Magistrate on next day who took cognizance and issued process against the petitioner on the same day. The provisions of the

Act seek to remedy the financial indiscipline during the course of commercial dealings which at times may ruin the business/trade of the effected party and therefore, the provisions must receive fair, pragmatic, harmonious and purposive interpretation so that object of the enactment is achieved and the cause of justice is advanced. Hon'ble Supreme Court, in**Union of India Vs. Ranbaxy Laboratories Limited and Others, 2008 (7) SCC 502** has held that principles of interpretation of statue mandate the constitutional courts to shun any construction which results in injustice, absurdity and anomaly that leads to inconsistency and friction in the system, which the statute purports to regulate, has to be rejected. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it.

14. In **Narashimaha Murthy Vs. Susheelabai and Others 1996 (3) SCC 644** Hon'ble Supreme Court held that purpose of law is to prevent brooding sense of injustice. It is not the law, but

the spirit and eternal sense of it that makes the law meaningful.

15. Viewed thus, it is evident that complaints, although instituted before the expiry of the statutory period of fifteen days, yet by the time cognizance thereon was taken on the next day as per the delivery reports of the demand notice, the fifteen days' time for making the payments thereunder was already over. Thus, even if no cause of action had accrued on the date of filing of the complaints, still by the time the complaints were considered and cognizance was taken by the learned Magistrate, the statutory period had expired. Not only that, petitioner had the time to make payments or respond to the demand notice even thereafter till he received the summon for appearance. But that being not the case, mere filing of the complaints a day earlier was of no consequence when the cognizance thereon came to be taken on the next day only and moreover, the petitioner has nowhere exhibited his inclination to pay the cheque amounts at any stage of the proceedings during the last more than

four years and thus, has not been prejudiced at all in any manner. It would be apt to underline that provisions of Section 138 of Negotiable Instruments Act, 1881 are aimed at addressing the financial indiscipline in the day-to-day business transactions which are required to be interpreted in a pragmatic and meaningful way so that ultimate object of the legislation is achieved.

16. For the foregoing reasons, both these petitions are **dismissed**, and the order dated 30.07.2022, whereby cognizance was taken and process was issued against the petitioner in the two complaints, are upheld. Interim direction(s), if any, shall stand vacated.

17. Copy of this Judgement be placed across both these files.

18. Registry shall also send a copy of this judgement to the Trial Court for information.

(YASH PAUL BOURNEY)
JUDGE

SRINAGAR
28.10.2026
"Dar Manzoor"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No.