

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

Reserved on: 10.02.2025

Pronounced on: 21.02.2025

CRM(M) No.405/2023

FAYAZ AHMAD RATHER

... PETITIONER(S)

Through: - Mr. M. Amin Khan, Advocate

Vs.

TARIQ AHMAD WANI

...RESPONDENT(S)

Through: - Mr. Syed Sajad Geelani, Advocate.

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

JUDGMENT

1) The petitioner has challenged the complaint filed by the respondent against him alleging commission of offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the NI Act). Challenge has also been thrown to order dated 26.07.2022 passed by learned Special Mobile Magistrate (Sub Judge), Pulwama (hereinafter referred to as "the trial Magistrate"), whereby cognizance of the offence has been taken and the process has been issued against the petitioner.

2) It appears that the respondent/complainant filed a complaint before the learned trial Magistrate alleging commission of offence under Section 138 of NI Act against the petitioner. It was pleaded in the complaint that the respondent/complainant approached the petitioner for

purchase of land located at Looswani and the petitioner agreed to sell the land to the respondent for an amount of Rs.20.00 lacs. It was further pleaded that it was revealed during verification that the land is mortgaged to the bank, as such, the complainant/respondent requested the petitioner/accused to refund the sale consideration of Rs.20.00 lacs which he had already paid to the petitioner. According to the respondent/complainant, for repaying the amount of sale consideration, the petitioner/accused issued four cheques for an amount of Rs.5.00 lacs each dated 5th May, 2022, 10th May, 2022, 15th May, 2022 and 20th May, 2022 in favour of the respondent/complainant. It was further pleaded that the respondent/complainant deposited these cheques with his banker i.e. J&K Bank Branch office Parigam Pulwama on 21.06.2022, but the same were returned unpaid due to insufficiency of funds. Thereafter the respondent/complainant served a single legal notice dated 01.07.2022 upon the petitioner/accused calling upon him to pay the amount in respect of the dishonoured cheques within a period of fifteen days. However, when the petitioner failed to discharge his liability towards the respondent, the impugned complaint came to be filed by him.

3) The learned trial Magistrate, after recording preliminary evidence of the respondent/complainant and after going through the documents annexed to the complaint as also the contents of the impugned complaint, framed a prima facie opinion that the offence under Section 138 of NI Act is made out against the petitioner/accused and, accordingly, vide order impugned dated 26.07.2022, the process was issued against him.

4) The main and only ground urged by the petitioner for impugning the complaint and the order whereby process has been issued against him is that a single complaint in respect of four different cheques is not maintainable. It has been contended that in terms of Section 219 of Cr. P. C, not more than three offences of similar nature committed during the course of one year can be tried together. According to the petitioner, dishonour of each of the cheques constitutes a distinct and separate offence and, as such, it was incumbent upon the complainant to file four separate complaints against the petitioner.

5) I have heard learned counsel for the parties and perused record of the case.

6) As already stated, the only question which is required to be determined in this case is as to whether a single

complaint with regard to dishonour of more than three cheques is maintainable.

7) As per Section 219 of the Cr. P. C, when a person is accused of more offences than one of the same kind within the space of twelve months from the first to the last of such offences, he may be charged with and tried at one trial for any number of them not exceeding three. Thus, only upto three offences of same kind committed by an accused within a period of twelve months can be tried together in one trial.

8) The contention of the petitioner is that dishonour of each of the four cheques in the instant case would constitute separate and distinct offences, as such, the same could not have been tried together by filing the impugned complaint.

9) For determining the merit of the aforesaid submission of the learned counsel for the petitioner, it is necessary to understand as to at what stage an offence under Section 138 of the NI Act is constituted. For this purpose it would be apt to have a glimpse of the provisions contained in Section 138 of NI Act:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person

from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

10) From the above provision, it is clear that for constituting an offence under Section 138 of NI Act, there has to be drawl of cheque by a person for an amount of money in favour of another person for the discharge, in whole or part, of any debt or any other liability. Secondly, the said cheque should be returned by the banker unpaid either because of insufficiency of funds or because it exceeds the amount arranged to be paid from the account.

The third requirement is that the payee or holder in due course should make a demand for payment of the amount of money by giving a notice in writing to the drawer of the cheque, within thirty days of the receipt of information by him about dishonour of the cheque and lastly, if the drawer of the cheque fails to make the payment of the said amount of money to the payee or holder in due course within fifteen days of receipt of the said notice, the offence under Section 138 of the NI Act is constituted.

11) All the aforesaid four requirements have to be satisfied for constituting an offence under Section 138 of the NI Act. Thus, unless a demand notice is served by the payee upon the drawer of the cheque after receipt of information regarding dishonour of the cheque and the drawer of the cheque fails to make payment within fifteen days despite receipt of such notice of demand, the offence under Section 138 NI Act would not be complete. The cause of action for filing a complaint in favour of the payee against the drawer of the cheque arises only when the drawer of the cheque fails to make payment of the amount of the cheque to the payee or the holder in due course within fifteen days of receipt of notice of demand. Mere issuance of cheque or its dishonour by the banker does not give rise to cause of

action for filing a complaint against the drawer of the cheque.

12) In the instant case, the respondent/complainant has issued and served upon the petitioner/accused a joint notice of demand dated 01.07.2022 in respect of all the four dishonoured cheques calling upon him to make the payment in respect of all the four cheques within fifteen days of receipt of notice of demand. Thus, a single cause of action arose in favour of the respondent for filing a complaint against the petitioner upon expiry of fifteen days from the date of service of notice of demand dated 01.07.2022. The dishonour of four cheques or issuance thereof by the petitioner in favour of the respondent did not give rise to any cause of action in favour of the respondent and, as such, mere issuance or dishonour of cheques in question would not constitute an offence against the petitioner.

13) In the present case, four different offences were not constituted upon dishonour of four different cheques issued by the petitioner in favour of the respondent. Only one offence was constituted against the petitioner when, despite receipt of joint notice of demand, he failed to pay the amount to the respondent within the stipulated period

of fifteen days. Thus, Section 219 of the Cr. P. C does not have any applicability to the facts of the present case.

14) The issue as to whether a single complaint would be maintainable in respect of more than three cheques has been dealt with by various High Courts of this Country and it has been the consistent view of the Courts that a single complaint in respect of dishonour of more than three cheques is maintainable if a consolidated notice of demand is served upon the accused. Reference in this regard is made to the judgment of Gujarat High Court in the case of **U-Turn and others vs. State of Gujarat and another**, 2024 SCC OnLine Guj 1427, judgment of Delhi High Court in the case of **Pawan Dhanpatrai Malhotra vs. Mahender Khari**, 2024 SCC OnLine Del 3951, and judgment of Punjab and Haryana High Court in the case of **Sh. Charashni Kumar Talwani vs. M/S Malhotra Poultries Kumar Talwani vs. M/S Malhotra Poultries**, 2013 SCC OnLine P&H 26656.

15) Learned counsel for the petitioner has, while supporting his arguments, placed reliance upon order dated 5th September, 2019, passed by the Supreme Court in **Vani Agro Enterprises vs. State of Gujarat & anr.** (Criminal Appeal No.587-590 of 2010). I am afraid the ratio laid down by the Supreme Court in the said case is not

applicable to the facts of the present case. In the aforesaid case, the issue before the Supreme Court was as to whether four different complaints filed in respect of four different cheques should be consolidated and heard together. The Supreme Court, after noticing the provisions contained in Section 219 of the Cr. P. C, observed that even if said provision applies, there have to be two trials because not more than three cases can be tried together even if they occur in one year. The issue before the Supreme Court was not as to whether a single complaint in respect of four cheques is maintainable. Thus, the ratio laid down by the Supreme Court in the aforesaid case relied upon by learned counsel for the petitioner is not applicable to the facts of the present case.

16) For the foregoing reasons, I find no merit in the petition. The same is dismissed accordingly. Interim direction dated 18.08.2023 shall stand vacated.

17) A copy of the order be sent to the learned Magistrate for information.

(SANJAY DHAR)
JUDGE

Srinagar,
21.02.2025
“Bhat Altaf-Secy”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No