

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

Reserved on: 10.11.2025
Pronounced on: 21.11.2025
Uploaded on: 21.11.2025
*Whether the operative part
or full judgment is
pronounced: **Full***

CRM(M) No.264/2022

ABDUL HAMID WANI

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Mudasir Bin Hassan, Advocate.

Vs.

ABDUL HAMID LONE

...RESPONDENT(S)

Through: - None.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged the complaint filed by the respondent against him for offence under Section 138 of the Negotiable Instruments Act, which is stated to be pending before the court of learned Additional Mobile Magistrate, Shopian (hereinafter referred to as "the trial Magistrate"). Challenge has also been thrown to order dated 10.06.2022, passed by the learned trial Magistrate, whereby cognizance of the offence has been taken and process has been issued against the petitioner.

2) It appears that the respondent has filed a complaint alleging commission of offence under Section 138 and 142 of

Negotiable Instruments Act against the petitioner before the Court of learned trial Magistrate. In the complaint, it is alleged that the petitioner owes an amount of Rs.14.00 lacs to the respondent and in connection with liquidation of the said amount, he had issued cheque bearing No.29633156 dated 11.05.2022, for an amount of Rs.14.00 lacs payable at J&K Bank Branch Unit Harmain, Shopian. When the said cheque was presented for its encashment, the same was returned unpaid with the remarks “alterations require drawer’s authentication.”

3) It is further alleged that after receiving the aforesaid information from the Bank, the respondent served a legal notice of demand dated 23.05.2022 upon the petitioner calling upon him to make the payment within fifteen days. However, the petitioner failed to make the payment within the aforesaid period, which prompted the respondent to file the complaint before the learned trial Magistrate.

4) Vide the impugned order dated 10.06.2022, the learned trial Magistrate, after framing a prima facie opinion that the petitioner has committed offence under Section 138 of the Negotiable Instruments Act, issued a process against him.

5) The petitioner has challenged the impugned complaint and the impugned order on the grounds that the cheque in

question is forged and that the act of forgery has been committed by the respondent. It has been submitted that the alterations in the amount mentioned in the cheque have been made by the respondent/complainant.

6) According to the petitioner, he had sufficient balance in his account on the date when the cheque was returned unpaid, but because the said cheque was forged by the respondent, the same was returned unpaid. It has been further submitted that the petitioner owed only a sum of Rs.14,000/ to the respondent, for which he had issued the cheque, but the respondent has converted the figures and words “14,000” into “14.00” lacs.

7) Notice of this petition was sent to the respondent, but despite service, nobody has appeared on his behalf.

8) I have heard learned counsel for the petitioner and I have also perused record of the trial Magistrate.

9) The issue that falls for determination in this case is as to whether dishonour of a cheque on account of alteration made in the cheque amount would constitute an offence under Section 138 of the Negotiable Instruments Act.

10) The issue as to in what contingencies the offence under Section 138 of the Negotiable Instruments Act would be constituted upon dishonour of a cheque has been deliberated

upon by the Supreme Court in the case of **M/s Lakshmi Dyechem v. State of Gujarat & Ors.**, (2012) 13 SCC 375. It has been held as under:

“16. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in Magma case [(1999) 4 SCC 253 : 1999 SCC (Cri) 524] that the expression “amount of money ... is insufficient” appearing in Section 138 of the Act is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the “signatures do not match” or that the “image is not found”, which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act:

16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance, this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of

the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied.

16.2. *There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.”*

11) From the foregoing analysis of the legal position, it is clear that so long as an act or omission on the part of the drawer of the cheque is intended to prevent the cheque being honoured, the dishonour would become an offence under Section 138 of the Negotiable Instruments Act. Therefore, in a situation where

the drawer of a cheque intentionally appends a different signature on the cheque, which does not match with his specimen signature available in the bank, the offence under Section 138 of the Negotiable Instruments Act would be constituted against the drawer. Similarly, in a case where a drawer intentionally, with a view to prevent the honour of the cheque, makes overwriting/alterations in the cheque, either in the amount mentioned in the cheque or in the date mentioned therein, without authenticating these overwritings or alterations, the offence under Section 138 of the Negotiable Instruments Act would get attracted.

12) Section 87 of the Negotiable Instruments Act provides that any material alteration of a negotiable instrument renders the same void as against one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. An alteration in the amount mentioned in the cheque qualifies to be a material alteration within the meaning of Section 87 of the Negotiable Instruments Act.

13) In the present case, the alteration which has been made in the cheque pertains to the amount mentioned therein and, as such, it is a material alteration. However, the question remains as to who was responsible for making this alteration.

If the said alteration has been made by the accused-drawer of

the cheque with a view to defeat the proposed proceedings under Section 138 of the Negotiable Instruments Act against him, he cannot be absolved of his liability for prosecution but if such alteration has been made by payee of the cheque with a view to take undue benefit, the situation may be different. The issue as to which of the parties has made alteration in the cheque, is a question of fact which can be determined only during trial of the case.

14) In my aforesaid view I am supported by the decision of the Supreme Court in the case of **Veera Exports vs. T. Kalavathy**, (2002) 1 SCC 97. In the said case, the Supreme Court has, after taking note of the provisions contained in Section 87 of the Negotiable Instruments Act, observed as under:

“...The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires

evidence to prove the aforesaid question whenever it is disputed.

10. *It is held by the High Court that a change of date is a material alteration which affected the interests of the respondent. It is held that the respondent not being a willing party to the said alteration, the cheques were void as contemplated by Section 87 of the Negotiable Instruments Act. At this stage there is no basis for arriving at such a conclusion. In the earlier part of the impugned judgment, it has been correctly held that this is a question of fact. This is a fact which will have to be established on evidence during trial. At this stage the High Court could not have quashed the complaint merely on the basis of an assertion in the reply.”*

15) From the foregoing analysis of the law on the subject, it is clear that the issue as to whether the alterations made in the cheque, which is subject matter of the impugned complaint, have been made at the instance of the petitioner or at the instance of the respondent, can be determined only after trial as the same is a question of fact which cannot be gone into in the present proceedings.

16) It is also pertinent to note here that in the present case, as per the allegations made in the complaint, the petitioner, despite having received the demand notice informing him that the cheque had been dishonoured on account of the reason that the alterations have not been authenticated did not choose to respond to the said notice. Had the petitioner responded to the demand notice and given his version, the

situation may have been different but once the petitioner has failed to respond to the demand notice, the determination of the issue as to at whose instance the alterations were made becomes a matter of trial.

17) For the foregoing reasons, the petition is dismissed leaving it open to the petitioner to project the contentions raised by him in the present petition before the learned trial Magistrate at the appropriate stage during trial of the case.

18) A copy of this order be sent to the learned trial Magistrate for information.

(SANJAY DHAR)
JUDGE

Srinagar
21.11.2025
"Bhat Altaf"

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	Yes