

(2008) 03 J&K CK 0007
In the Jammu And Kashmir High Court

Manmohan Choudhary

APPELLANT

Vs

Krishan Kumar

RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 03 J&K CK 0007

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—Through a complaint u/s 138 of Negotiable Instruments Act, 1881 instituted before Trial Magistrate on 9th May

2005 the respondent alleged commission of offence there under against petitioner hereinabove on the ground that after issuing cheque No.

4130529 dated 10.11.2004 in his favour for an amount of Rs. 2.86 lacs in partial payment of Rs. 13.00 lacs as purchase money of his land, the

petitioner accused instructed the Bank to stop payments under the cheque due to which the cheque could not be cashed which was brought to his

notice who requested him to present the cheque for encashment after some time where after it was again refused for the same reason. On receipt

of complaint the Learned Magistrate below took cognizance u/s 138 of Negotiable Instrument Act and after recording preliminary statement of

respondent complainant directed issuance of process to him which is continuing till date.

2. Aggrieved the petitioner has invoked jurisdiction of this Court seeking quashment of the complaint and cognizance taken by the Magistrate

below mainly on the ground that on basis of allegations leveled in the memo of complaint an offence u/s 138 Negotiable Instrument Act was not

made out as none of the ingredients thereof was forthcoming from the set of allegations. During course of submissions petitioner's Counsel

reiterated the contents of petition has also referred to the relevant provision and the contents of complaint. None is however present to be heard for

other side.

3. I have heard Learned Counsel and considered the matter. Perusal of the memo of complaint instituted by respondent complainant before the

Trial Magistrate, reveals that while alleging that petitioner accused agreed to purchase a piece of land from him and his brother on 19.10.2004 for

a total amount of Rs. 13,82,500/- and made some payments and issued the above said cheque for another part of payment complained that on

being presented the cheque could not be cashed as the same was returned for the reason that payment thereof had been stopped by petitioner

accused. On basis of that set of allegations commission of offence u/s 138 Negotiable Instrument Act by petitioner is required to be assessed.

4. At this stage and before proceeding ahead in the matter it will be appropriate to notice the contents of said provision to set forth the ingredients

thereof. Firstly is issuance of cheque by drawing it on a bank in favour of a person for payment from his account maintained in said bank; secondly

the return of cheque by the bank unpaid, for the reason of (a) insufficiency of money in that account to satisfy the cheque and (b) that the amount of

cheque exceeded the amount arranged to be paid from the account under an agreement with the Bank. So far as drawing of the cheque in

respondents favour and its return is concerned that is fully suggested by contents of the complaint but reason for its return as pleaded is neither

insufficiency of the amount in that account nor that the amount of cheque exceeded the amount arranged to be paid, and in that much return of the

cheque does not prima-facie appear to be for any such reason as would attract Section 138 of the Act. On the contrary the cheque under

reference was admittedly returned due to prohibition of its encashment by petitioner, which is not a reason acknowledged u/s 138 for attracting it;

which therefore could not be invoked, notwithstanding the consideration that any other offence under some different statute might be revealed by

allegations contained in the complaint.

5. Accordingly and in given circumstances of the case the petition is allowed and

the order of Learned Magistrate below taking cognizance of offences u/s 138 Negotiable Instrument Act against the petitioner accused on the above said complaint is upset. The matter is remanded back to Learned Magistrate for allowing respondent an opportunity to show prima facie commission of some other offence against petitioner in given set of allegation, or at his option allow him liberty to institute a fresh complaint for that purpose, only where after he would consider proceeding ahead in the matter, which would come up before him on 22nd of April 2008.

6. The matter stands accordingly disposed of. Registry to follow up.