

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

**CRM(M) No.610/2024**

**HAJI SONAULLAH QADRI**

**...PETITIONER(S)**

Through: - Mr. Zahoor Ahmad Shah, Advocate.

Vs.

**KHURSHID AHMAD MALLA**

**...RESPONDENT(S)**

Through: - Mr. Hamza Prince, Advocate.

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

**ORDER(ORAL)**  
**31.05.2025**

1) The petitioner has challenged the complaint filed by the respondent against him under Section 138 of Negotiable Instruments Act as also order dated 04.04.2024 passed by the learned Judicial Magistrate 1<sup>st</sup> Class (City Munsiff), Srinagar (hereinafter referred to as "the trial Magistrate"), whereby process has been issued against him.

2) It appears that the respondent has filed a complaint under Section 138 of Negotiable Instruments Act against the petitioner before the learned trial Magistrate, alleging therein that the petitioner had offered to sell a plot of land measuring 01 kanal situated at Raipura Palhalan Pattan and the total consideration was settled at Rs.16.00 lacs, out

of which respondent paid an amount of Rs.9.00 lacs to the petitioner.

3) It was pleaded that the petitioner avoided to execute the sale deed in favour of the respondent on one pretext or the other and then promised that he would return the amount of Rs.9.00 lacs to him within one month. Ultimately, on 25.12.2023, the petitioner issued a cheque for an amount of Rs.9.00 lacs in favour of the petitioner. However, the said cheque, when presented for encashment, was returned unpaid for insufficiency of funds. The respondent is stated to have served a notice of demand upon the petitioner but despite receipt of said notice of demand, the petitioner failed to liquidate the amount of cheque. Accordingly, the impugned complaint came to be filed before the learned trial Magistrate, in which the learned trial Magistrate, after taking cognizance of the offences, issued process against the petitioner in terms of impugned order dated 04.04.2024.

4) The petitioner has challenged the impugned complaint and the impugned order on the grounds that the respondent has not furnished the particulars of the loan which he is alleged to have obtained from the bank for arranging an amount of Rs.9.00 lacs. Thus, according to

the petitioner, the assertions made by the respondent are not substantiated. It has been further contended that the respondent had removed the cheque unauthorizedly during his employment with the petitioner as a domestic help and has now misused the same. It has been contended that the petitioner has not received any amount from the respondent and there exists no debt or liability upon the petitioner towards the respondent. It has been further contended that the allegations made in the impugned complaint do not constitute any offence against the petitioner.

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

6) As already narrated, the contention of the petitioner is that the respondent/complainant has not substantiated the contention that he had obtained loan of Rs.9.00 lacs from the bank for paying the amount to the petitioner. It has been contended that the respondent had no means to pay such a huge amount to the petitioner.

7) The question whether the respondent had means to pay an amount of Rs.9.00 lacs to the petitioner and how he had managed to get this much of amount for its payment to the petitioner, are the matters which cannot be determined

by this Court in these proceedings. The petitioner has not disputed the issuance of the cheque by him and he has not disputed its dishonour or the receipt of demand notice. Once a cheque is issued by an accused in favour of the complainant, a presumption in terms of Section 139 of the Negotiable Instruments Act arises that the cheque has been issued in discharge of a legally enforceable debt. The said presumption is, however, rebuttable in nature and drawer of a cheque can prove, by leading evidence, that the cheque was not issued in discharge of a legally enforceable debt. The same can be done by the petitioner in the present case only during the trial of the case.

8) This Court cannot go into the question as to whether the respondent had means to pay an amount of Rs.9.00 lacs to the petitioner nor can it go into the veracity of the defence of the petitioner that the respondent had removed the cheque in question unauthorizedly. These are matters which can be urged by the petitioner before the learned trial Magistrate during the trial of the case by leading evidence in support of the said assertions.

9) Learned counsel for the petitioner has, while relying upon the judgment of the Supreme Court in the case of **Indus Airways Private Limited vs. Magnum Aviation**

**Private Limited and another,** (2014) 12 SCC 539, contended that the cheque in question was not issued by the petitioner to discharge any existing liability. In the aforesaid judgment it has been held that if a cheque is issued as advance payment for purchase of goods and for any reason the purchase order is not carried to its logical conclusion, the cheque cannot be said to have been drawn for an existing debt or liability.

10) The ratio laid down by the Supreme Court in the aforesaid case is not applicable to the facts of the present case as it is not the case of the petitioner that he had issued the cheque as an advance payment for goods or services to be supplied/rendered by the respondent but it is a case where the petitioner has taken an entirely different stand by contending that the cheque was unauthorizedly removed by the respondent and that he had no means to pay an amount of Rs.9.00 lacs to the petitioner.

11) For the foregoing reasons, I do not find any merit in the petition. The same is dismissed accordingly. Interim order dated 14.10.2024 shall stand vacated.

**(Sanjay Dhar)**  
**Judge**

**Srinagar,**  
**31.05.2025**  
**"Bhat Altaf"**

Whether the **order** is reportable: YES/NO