

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

Pronounced on: 24.04.2026

Uploaded on: 29.04.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

CRM(M) No.492/2025

ABDUL AHAD DAR

...PETITIONERS/APPELLANT(S)

Through: - Mr. G. M. Bhat, Advocate.

Vs.

MOHAMMAD SIDIQ DAR

...RESPONDENT(S)

Through: - Mr. Umar Rashid Wani, Advocate.

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

ORDER(ORAL)

1. The petitioner through the medium of present petition has challenged order dated 14.02.2025 passed by learned Judicial Magistrate 1st Class, Sumbal, whereby his application seeking forensic examination of writing on the body of the cheques, which were subject matter of the complaint, has been rejected.

2. It appears that the respondent-complainant has filed a complaint under Section 138 of Negotiable Instruments Act against the petitioner in respect of dishonour of three cheques for an amount of Rs.1.00 lakh each. It also

appears that trial of the case is almost complete, inasmuch as evidence of the complainant as well as the evidence of defence has concluded. It further appears that while the evidence of the defence was in progress, the petitioner/accused filed an application before the learned trial Magistrate seeking a direction that the cheques which are subject matter of the complaint may be sent for forensic examination of the writing on the body of the cheques.

3. In the application, it was submitted by the petitioner that during his examination under Section 242 of J&K Cr.P.C, he had made a statement that the cheques in question were taken by the complainant from him while he was in police lockup at Police Station, Sumbal. It was further submitted in the application that in his statement, while appearing as a defence witness, the petitioner had stated that though he had signed the cheques, yet the blanks in the cheques were filled up by Sub-Inspector Mr. Abdul Ahad, who was posted at Police Station, Sumbal at the relevant time, while he was in custody. In these circumstances, the petitioner/accused contends that forensic examination of the cheques is necessary so as to ascertain whether the statement made by him is reliable.

4. The learned trial court, after hearing the parties and after analysing the position of law, passed the impugned order, whereby the application of the petitioner has been rejected.

5. The petitioner has challenged the impugned order on the ground that the learned trial Magistrate has not applied his mind while passing the impugned order. It has been submitted that the petitioner was forced to put his signatures on the cheques while he was in police custody and the amount in the cheques was filled up by Sub-Inspector Abdul Ahad of Police Station, Sumbal. It has been contended that the cheques in question were managed by the respondent/complainant under coercion from the petitioner and, therefore, the petitioner had instructed his banker to stop the payment. It has been further contended that in the larger interests of fair trial, forensic examination of the cheques is necessary.

6. Heard and considered.

7. The settled legal position with regard to negotiable instruments is that once a cheque has been proved to be drawn by a drawer in favour of holder of the cheque, the presumption under Section 139 of the Negotiable Instruments Act arises in favour of holder of the cheque

and the burden shifts upon the drawer to rebut this presumption by leading cogent and convincing evidence to establish that the cheques were not issued voluntarily or that the same were not issued in discharge of any debt or liability. Once it is admitted that the cheques were issued under the signatures of the drawer, it is immaterial as to who has filled up the amount in the cheques. The Supreme Court in the case of **Oriental Bank of Commerce v. Prabodh Kumar Tewari**, 2022 LiveLaw (SC) 714, the judgment which has been relied upon by the learned trial court, has clearly held that the fact that the details in the cheques have been filled up not by the drawer but by some other person would be immaterial. The Court has further held that the presumption which arises on signing of the cheque cannot be rebutted merely by report of a handwriting expert, even if the details in the cheque have not been filled up by the drawer but the same have been filled up by any other person.

8. In the face of the aforesaid settled legal position, the determination of the question as to who has filled up the blanks in the cheques, which have, admittedly, been drawn under the signatures of the petitioner/accused, would be a superfluous exercise and will not serve any purpose except delaying the disposal of the complaint. The

defence of the petitioner/accused that the cheques were drawn by him under coercion in police lockup and even the blanks were filled up in the said cheques under the same circumstances, can be proved and established by the petitioner by producing the witnesses who are acquainted with these circumstances. The said defence cannot be proved by subjecting the cheques to forensic examination.

9. For what has been discussed herein above, I do not find any ground to interfere with the impugned order passed by the learned trial Magistrate. The petition lacks merit and is dismissed accordingly. Interim direction passed by this court on 26.08.2025 shall stand vacated.

10. A copy of this order may be sent to the learned trial magistrate for information.

(Sanjay Dhar)
Judge

SRINAGAR

24.04.2026

“Bhat Altaf-Secretary”

Whether the **Order** is speaking: **YES**

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