

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

**CRM (M) No. 388/2026
CrIM No. 906/2026**

Dated: 8th of July, 2026.

Aijaz Ahmad Bhat, Age: 46 Years
S/O Mohd. Yousuf Bhat
R/O Dilsoz Colony, Natipora, Srinagar.

... Petitioner(s)

Through: -
Mr Faisal Javied, Advocate.

V/s

Nisar Ahmad Malik
S/O Abdul Gani Malik
R/O Baba Mohalla, Shopian.

... Respondent(s)

CORAM: HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(JUDGMENT)

01. The Petitioner has invoked the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita [BNSS], 2023, against the Order dated 12 November 2012 passed by the learned Chief Judicial Magistrate, Shopian [“the Magistrate”], whereby cognizance was taken in a Complaint titled ‘**Nisar Ahmad Malik v. Aijaz Ahmad Bhat**’, filed by the Respondent (Complainant) under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”].

02. Briefly stated, the Respondent (Complainant) filed the Complaint under Section 138 of the NI Act alleging dishonour of cheques amounting to Rs. 2,10,000/-. The Magistrate took cognizance vide the impugned Order dated 12 November 2012 and issued the process on the basis of statement of Complainant and one witness.

03. The Petitioner has called in question the Order dated 12 November 2012 on the ground that the Magistrate failed to comply with the

requirement of Section 202 Cr. P. C. (corresponding to Section 225 of the BNSS), inasmuch as the Petitioner resides beyond the territorial jurisdiction of the Magistrate. It was contended that the Magistrate was duty bound to postpone the issuance of process and conduct a proper inquiry before proceeding against the Petitioner.

04. The Petitioner has also placed reliance on the Judgment passed by the Hon'ble Supreme Court in a case titled '**In Re: Expeditious Trial of Cases under Section 138 of N. I. Act, 1881**', reported as '**2021 SCC Online SC 325**'.

05. Heard and considered.

06. When this matter was listed before the Court on 06 June 2026, this Court, taking note of the fact that the Petition was filed after a delay of more than 14 years, called for a Status Report from the Court of the Chief Judicial Magistrate, Shopian.

07. The report reveals that, vide Order dated 26 October 2017, after closure of defence evidence, the matter was posted for final arguments. However, the arguments could not be heard due to continuous absence of the Petitioner (accused), leading to initiation of proceedings under Section 514 of the Cr. P. C. (J&K) that pertains to forfeiture of bond.

08. Without much ado to the factual narration of the matter, it goes without saying that a Constitutional Bench of the Hon'ble Supreme Court in '**In Re: Expeditious Trial of Cases under Section 138 of N. I. Act, 1881**', reported as '**2021 SCC Online SC 325**', *inter alia*, directed as under:

“24 (2): Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.”

09. Therefore, before taking cognizance of the Complaint under Section 138 of the NI Act, the Magistrate is duty bound to conduct an inquiry when such accused resides beyond the territorial jurisdiction of the Court.

10. The amendment to Section 202 of the Code was made with an object to check that no false complaints are filed against the persons residing at far-off places simply to harass them and that false or frivolous complaints are filtered at the threshold through an inquiry.

11. Significantly, in the instant matter, the entire evidence of both sides stood concluded and the case was posted for final arguments as far back as 26 October 2017, i.e., well before the Constitution Bench of the Hon'ble Supreme Court rendered its judgment on 16 April 2021. The Petitioner participated in the entire trial proceedings without raising any objection regarding alleged non-compliance of Section 202 Cr. P. C. at the appropriate stage.

12. The question that arises for consideration is whether after the parties have led complete evidence and the matter is at the stage of final arguments, the Petitioner can be permitted to challenge the Order of cognizance/ issuance of process on the ground of non-compliance of Section 202 Cr. P. C.

13. The first opportunity for the Petitioner to raise such objection arose when the Magistrate invoked Section 204 Cr. P. C. and issued process. The Petitioner, however, participated in the proceedings without any protest, cross-examined the witnesses and lead his evidence. At this highly belated stage, when the matter is awaiting its final outcome, the clock cannot be set back to the pre-cognizance state. By his active participation in the trial, the very object of Section 202 Cr. P. C. stands achieved. The objection regarding alleged non-compliance is, therefore,

deemed to have been waived. Such challenge, at this stage, appears to be an afterthought.

14. Even otherwise, the Petitioner has failed to demonstrate any specific prejudice caused by the alleged omission of the enquiry. After a full-fledged trial, where the Petitioner had every opportunity to defend himself on merits, it is extremely difficult to establish prejudice.

15. Section 465 of the Criminal Procedure Code, 1973 (corresponding to Section 511 BNSS, 2023) squarely covers such a situation. It provides that no finding, sentence or order shall be reversed or altered on account of any error, omission or irregularity in the complaint, summons, warrant, order, judgment or other proceedings, unless a failure of justice has in fact been occasioned thereby. While determining whether failure of justice has occurred, the Court is required to consider whether the objection could and should have been raised at an earlier stage.

16. In the present case, the Petitioner was obliged to raise this objection immediately upon issuance of process or at the first appearance, but he remained silent. The Petitioner has also not explained what prevented him when he was called upon to lead evidence. The impugned Order dated 12 November 2012 itself records that the Magistrate had taken into consideration the statement of the Complainant and a witness, thereby indicating application of mind.

17. In view of the above, the procedural irregularity, if any, is curable and does not warrant interference at this state under Section 528 BNSS. Therefore, this Petition is **dismissed**, along with the connected CrIM.

18. However, before parting, a word of caution is necessary. The observations made in this Judgment are in the peculiar facts of the present case, where the entire evidence stood concluded and the matter was posted

for final arguments as far back as October, 2017. These observations, therefore, must not be read as, in any manner, diluting the mandatory character of the inquiry contemplated under Section 202 Cr. P. C. (225 BNSS) in cases where the objection is raised at the appropriate stage.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR

July 8th, 2026

"TAHIR"

- i. Whether the Judgment is approved for reporting? **YES.**

