



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

Reserved on: 07.07.2026

Pronounced on: 17.07.2026

Uploaded on: 17.07.2026

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

Crl R. No.24/2026

SHEIKH ABDUL REHMAN

...PETITIONER(S)

*Through: - Mr. Mujeeb Andrabi, Advocate, vice
Mr. G. A. Lone, Sr. Advocate.*

Vs.

GHULAM NABI KABOO

...RESPONDENT(S)

Through: - Respondent in person.

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

JUDGMENT

1) Through the medium of present revision petition, the petitioner has challenged order dated 31.03.2026 passed by the learned Chief Judicial Magistrate, Srinagar (hereinafter "the learned trial Magistrate"), whereby application of the petitioner under Section 142(b) of the Negotiable Instruments Act (for short "N.I. Act") seeking condonation of delay in filing the complaint under Section 138 of the N.I. Act has been dismissed.

2) It appears that a complaint under Section 138 of the N.I. Act came to be filed by the petitioner against the respondent initially before the Court of learned Chief Judicial Magistrate, Handwara on 04.11.2019. The subject



matter of the said complaint was three cheques dated 03.10.2019, 05.10.2019 and 07.10.2019 for Rs.11.00 lakhs each drawn on HDFC Bank, Handwara. When the said cheques were returned unpaid by the banker, a demand notice dated 21.10.2019 came to be served by the petitioner upon the respondents. When the respondent failed to pay the amount of cheques despite service of demand notice, the petitioner filed a complaint before the Court of learned Chief Judicial Magistrate, Handwara, on 04.11.2019 alleging commission of offence under Section 138 of the N.I. Act by the respondent.

3) After recording the preliminary evidence, the learned CJM, Handwara, issued process against the respondent, who, after putting in his appearance before the learned Magistrate, filed an application seeking dismissal of the complaint on the ground that the same has been filed prematurely. The application was dismissed by the learned CJM, Handwara, on 18.10.2021, by observing that there is no power with the Criminal Court to review its own orders.

4) The aforesaid order came to be challenged by the respondent by way of a revision petition before the learned Additional Sessions Judge, Handwara, who, vide his order dated 04.06.2021, observed that the issue as to whether or not the complaint is premature being triable in nature would be decided by the trial court after trial of the case.



5) Accordingly, after recording the evidence of the parties, the learned CJM, Handwara, vide his judgment dated 28.12.2023, dismissed the complaint of the petitioner, both on merits as also on the ground that the complaint filed by him against the respondent was premature because during the trial of the case it was established that the respondent had received the demand notice on 26.12.2019, whereas the complaint was filed on 04.11.2019, which is only after 10 days of receipt of the notice of demand.

6) The petitioner assailed the order/judgment of acquittal of the respondent and dismissal of the complaint by way of an appeal before this Court which was registered as CrIa(AS) No.03/2024. This Court vide judgment dated 08.08.2025 allowed the appeal and impugned judgment dated 28.12.2023 passed by the learned CJM, Handwara, in so far as it related to the decision of the complaint on merits, was set aside. It was, however, held that the complaint was filed by the petitioner prematurely before the expiry of stipulated period of 15 days. The Court further observed that the parties shall be free to take recourse to remedies, if any, available to them in law.

7) Pursuant to the aforesaid order passed by this Court, it seems that the petitioner presented a fresh complaint before the learned trial Magistrate in respect of the same very cheques which were subject matter of the earlier complaint



filed before the CJM, Handwara. The fresh complaint came to be filed before learned trial Magistrate, as according to the petitioner, the cheques were presented for encashment before the Jammu and Kashmir Bank Limited, Hari Singh High Street, Srinagar. Along with the fresh complaint, the petitioner also filed an application under Section 142(b) of the N. I. Act, seeking condonation of delay in filing the complaint.

8) In the application for condonation of delay in filing the complaint, the petitioner pleaded that he was *bonafidely* prosecuting the complaint before CJM, Handwara, from 04.11.2019 till 08.08.2025, when this Court held that the complaint was premature and gave liberty to the petitioner to avail remedies available to him under law. It was further contended that the period spent by the petitioner in prosecuting his earlier complaint before CJM, Handwara, and the appeal before the High Court, is required to be excluded while computing the period of limitation for filing the fresh complaint.

9) The learned trial Magistrate, after inviting objections to the application of the petitioner and after hearing the parties, passed the impugned order, whereby application of the petitioner under section 142(b) of the N.I. Act came to be dismissed on the ground that the complainant has failed to



explain the inordinate delay of more than six years in filing the fresh complaint. The learned trial Magistrate also observed that the earlier complaint filed by the petitioner was dismissed by CJM Handwara on merits after conducting full-dressed trial. Therefore, even if fresh trial is held in the complaint, the complainant cannot improve upon the evidence which he has already led in the previous complaint.

10) The petitioner has challenged the impugned order passed by the learned trial Magistrate on the grounds that the learned trial Magistrate has failed to appreciate that the period spent by petitioner in prosecuting the complaint before CJM, Handwara, and before the appellate court was required to be excluded by application of Section 14 of the Limitation Act. It has been further contented that legal position on the issue is clear that the period spent by a complainant in prosecuting a complaint which has been filed prematurely has to be excluded while computing the period of limitation for filing the fresh complaint. It has also been contended that the learned trial Magistrate has failed to appreciate that the findings of fact recorded by the CJM, Handwara, in the judgment of acquittal on merits of the case were set aside by this Court in appeal and, therefore, the said findings of fact cannot come in the way of the petitioner in prosecuting the fresh complaint against the respondent.



11) I have heard learned counsel for the petitioner as also the respondent in person. I have also gone through the impugned order and record of the trial court.

12) So far as the observation of the learned trial Magistrate that because previous complaint filed by the petitioner was dismissed by the learned CJM, Handwara, on merits after full-dress trial, as such, complainant cannot improve upon the evidence already led, is concerned, the same is misconceived for the reason that this Court, while deciding the appeal against the judgment of acquittal passed by the learned CJM, Handwara, has set aside the findings recorded by the said court on merits. Therefore, the findings recorded by the learned CJM, Handwara, in his order dated 28.12.2023 have no existence in the eyes of law and, as such, cannot have any bearing on the merits of the fresh complaint filed by petitioner.

13) The main issue which is required to be determined is whether the time spent by the petitioner in prosecuting the previous complaint before the court of learned CJM, Handwara, and before this Court while prosecuting the appeal against the judgment of acquittal passed by the learned CJM, Handwara, is eligible to be excluded while computing the period of limitation for filing the fresh complaint.



14) The aforesaid issue is no longer *res integra*. The Supreme Court has, in the case of **Yogender Pratap Singh v. Savitri Pandey and anr**, (2014) 10 SCC 713, while holding that cognizance of an offence punishable under Section 138 of the N. I. Act cannot be taken on the basis of a complaint filed before the expiry of period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act, proceeded to examine the issue whether the complainant can be permitted to present the complaint again, notwithstanding the fact that the period of one month stipulated under Section 142(b) of the Act for filing of such a complaint has expired. The Supreme Court, after examining the said issue, made the following observations:

“41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause



(b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.”

(Emphasis supplied)

15) From the foregoing analysis of the legal position, it is clear that the delay in filing fresh complaint can be condoned by excluding the period spent by the complainant in prosecuting his previous complaint which has been dismissed on account of its prematurity. In fact, the Supreme Court has gone to the extent of observing that if a payee or holder in due course of the cheque files a fresh complaint within one month from the date of decision in the criminal case, in that event, delay in filing the complaint will be treated as having been condoned under proviso to clause(b) of Section 142 of the Negotiable Instruments Act.

16) The aforesaid position of law has been reiterated and reaffirmed by the Supreme Court in its later judgment in the case of **Gajanand Burange vs. Laxmi Chand Goyal**, 2022 SCC OnLine SC 1711.

17) Reverting to the facts of the present case, the previous complaint filed by the petitioner was decided by the learned



CJM, Handwara, on 28.12.2023, whereafter the said order was assailed by the petitioner by way of an appeal before this Court, which came to be decided by this Court on 08.08.2025. In the light of the ratio laid down by the Supreme Court in **Yogendra Pratap Singh's** case (supra), the petitioner ought to have filed the fresh complaint within one month of decision of the Appellate Court, i.e. within one month from 08.08.2025. A perusal of record would show that the petitioner had been able to get the certified true copy of order dated 08.08.2025 on 20.08.2025 and besides this, the petitioner had to obtain original cheques from the Court of CJM, Handwara, so that the same could be annexed with the fresh complaint. As per record, the said cheques were handed over by the Court CJM, Handwara, to the petitioner on 25.08.2025, whereafter, the petitioner filed fresh complaint before the learned trial Magistrate on 11.09.2025. Thus, delay in filing the fresh complaint has been properly explained by the petitioner in the present case.

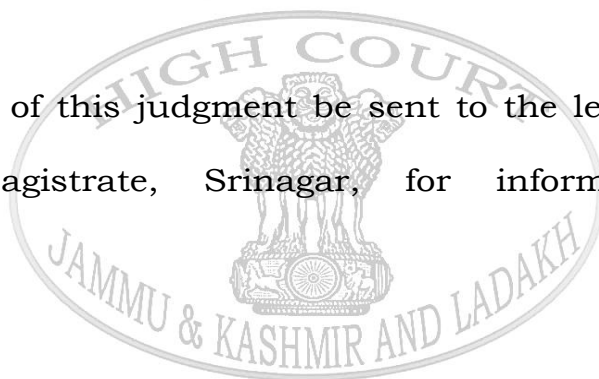
18) The learned trial Magistrate has, without going into aforesaid aspects of the matter, proceeded to dismiss the application of the petitioner seeking condonation of delay in filing the complaint. The course adopted by learned trial Magistrate clearly reflects that the said court has acted with material irregularity and the findings recorded by the said



court are perverse and a result of wrong appreciation of facts and the law. The impugned order, therefore, is not sustainable in law.

19) Accordingly, the petition is allowed and the impugned order passed by the learned Chief Judicial Magistrate, Srinagar, is set aside. It is further directed that the delay in filing the fresh complaint by the petitioner before CJM, Srinagar, shall stand condoned. The matter is remanded to the learned CJM, Srinagar, for fresh consideration of the complaint filed by the petitioner on its merits in accordance with law.

20) A copy of this judgment be sent to the learned Chief Judicial Magistrate, Srinagar, for information and compliance.



**(Sanjay Dhar)
Judge**

SRINAGAR

17.07.2026

“Bhat Alitaf-Sherzary”

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