Serial No. 48
Supplementary-1 Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM (M) No. 983/2026
CrlM No. 2237/2026

Bilal Ahmad Dar

… Petitioner(s)

Through: -
Mr Mohammad Ibrahim Wani, Advocate.

V/s

Zia ud Din Changal

… Respondent(s)

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(ORDER)

20.11.2026

01. The Petitioner has approached this Court invoking the jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS], seeking quashing of the three consolidated proceedings, arising in a Complaint under Section 138 of the Negotiable Instruments Act in file No. 163/2023 [CNR No. JKBA060032852023], file No. 164/2023 [CNR No. JKBA060032862023] and file No. 165/2023 [CNR No. JKBA060032872023], on the ground that they constitute an abuse of the process of law, arising out of misuse of official position and criminal breach of trust by the Respondent, and that the cheques were never issued for discharge of any personal debt owed to the Respondent.

02. To be brief, the Petitioner, Bilal Ahmad Dar, claims to be a businessman, who availed a Cash Credit Facility of Rs.25.00 lakhs from the Kashmir Mercantile Cooperative Bank, Branch Sopore, in reference to account No. CC-23 in January, 2017, secured by mortgage of immoveable property. He also stated to have availed an Overdraft facility of Rs.15.00 lakhs on 17th of July, 2021. The contention of the Petitioner is that, as a standard banking practice and formal security requirement for the Cash Credit and Overdraft facilities, the Petitioner was required to, and did,

furnish three undated signed cheques without mentioning any amount. The cheques were drawn on account No. CC-23 of the Cooperative Bank.

03. The submission of the Petitioner is that the Respondent, Ziya ud Din Changal, was posted as Assistant Manager at the said Bank branch, who was holding a position of trust, but while misusing his official position, he filled the amount and his own name as payee in the three security cheques, dated them and presented them for encashment in his personal capacity. These cheques were presented around 3rd of June, 2023 to 6th of June, 2023 and were dishonored with remarks "exceeds arrangements".

04. To the contrary, it appears that the Respondent in the Complaints alleged that the Petitioner, being his friend, took a friendly loan of Rs.20.00 lakhs, repaid Rs.5.00 lakhs in cash and issued the three cheques of Rs.5.00 lakhs each towards the remaining liability of Rs.15.00 lacs.

05. It is seen that the Trial Court has consolidated the three complaints, holding that they arise out of a single financial transaction and that clubbing would avoid the duplication of evidence. The case is presently at the stage of recording evidence of the Complainant-Respondent.

06. In addition, the learned Counsel for the Petitioner submits that the trial is at the stage of almost completion of evidence of the Complainant-Respondent.

07. The principal ground of challenge is that the cheques in question were issued solely as formal security/ collateral for the Bank's Cash Credit and Overdraft facilities and were never issued for the discharge of any legally enforceable personal debt or liability in favour of the Respondent in his individual capacity.

08. Heard learned Counsel for the Petitioner.

09. The power of the High Court under Section 528 of the BNSS is aimed at to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

10. There is a statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act in favour of the holder that the cheque was issued for consideration and for discharge of a debt or liability. At the same time, a cheque issued as "security" is not a worthless piece of paper in every circumstance. If a loan or liability exists, it remains unpaid by the due date, a security cheque can mature for presentation and attract Section 138 of the Negotiable Instruments Act. In this regard, a reference can be made to the law laid down in **"Sripati Singh V. State of Jharkhand & Anr.**, **(2022) 18 SCC 614"**, wherein at paragraph No.20 it has been observed as under:

> "20. Further, this Court in Womb Laboratories (P) Ltd. has held as follows:
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> > '4. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved- that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques."

11. In exercise of inherent power, the High Court does not conduct a mini trial or weigh evidence. Disputed questions of fact such as whether the cheques were issued for a personal friendly loan or only as a Bank security, whether any personal consideration passed and the true nature of the transaction are ordinarily to be decided at the trial. The quashing of the proceedings in exercise of inherent power is warranted in exceptional circumstances, where the Complaint, even if taken at face value, does not disclose the offence.

12. The allegation that the Respondent, as a bank official, converted security cheques held in trust into personal instruments raises a serious question of abuse of process, however, the criminal liability of the Respondent for breach of trust is distinct from the maintainability of

Section 138 Complaints against the Petitioner. The former may be the subject matter of a separate complaint/ FIR, while the later depends on whether a legally enforceable personal debt is made out.

13. Keeping in view the stage and progression of the trial, any observation on disputed question of fact raised by the Petitioner would surely prejudice the parties. The same would amount to conducting a mini trial under the inherent jurisdiction, which is impermissible in law, as it would relegate this Court to the position of Trial Court.

14. Therefore, once the cheques, *prima facie,* appear to have been issued and, on presentation, dishonored, a presumption arises that they were issued towards discharge of legally enforceable debt, which can be rebutted by leading evidence. The contention of the Petitioner that the cheques were given by way of security is a matter of defence, to be decided during the course of the trial. Thus, the Petition, being utterly misconceived, is, accordingly, **dismissed** in *limini*, along with the connected CrlM.

15. Copy of this Order be forwarded to the Trial Court for information.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
November 20th, 2026
"TAHIR"

i. Whether the Order is approved for reporting? **Yes**.

Tahir Manzoor Bhat
I attest to the accuracy and
authenticity of this document

21.11.2026