

Sr. No.49
Suppl List-1

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No.350/2022
CrIM No.1026/2022

NASEER AHMAD SHEIKH ... PETITIONER(S)

Through: - Mr. Adil Asmi, Advocate.

Vs.

MOHAMMAD SULTAN BHAT ...RESPONDENT(S)

Through: -

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

ORDER(ORAL)

25.08.2022

1) The petitioner has filed the instant petition under Section 482 of the Cr. P. C challenging four complaints filed by respondent against him alleging commission of offences under Section 138 of the Negotiable Instruments Act. These four complaints pertain to four different cheques.

Three complaints are pending before the Court of Judicial Magistrate, 1st Class, Bandipora, whereas one of the complaints is stated to be pending before the Court of Additional Mobile Magistrate, Bandipora.

2) Heard learned counsel for the petitioner and perused the material on record.

3) It has been contended by learned counsel for the petitioner that the learned trial Magistrate has jointly tried all the four complaints and, as

such, the procedure adopted by the learned trial Magistrate is not in accordance with the law.

4) The petitioner has not placed on record any order passed by the learned trial Magistrate whereby all the four complaints have been directed to be tried jointly. In fact, learned counsel submits that there is no such order passed by the learned trial Magistrate. In this view of the matter, the ground urged by learned counsel for the petitioner is without any merit.

5) It has been next contended by learned counsel for the petitioner that the preliminary statements in all the four complaints have not been recorded on oath which is a requirement of law.

6) A perusal of the copies of the preliminary statements of the complainant, which have been annexed with the petition, clearly indicate that the same have been recorded on oath/solemn affirmation. The ground urged by the learned counsel in this regard is not substantiated from the documents placed on record by the petitioner.

7) It has been next contended by learned counsel for the petitioner that statutory notices of demand were not served upon the petitioner and, as such, there was no cause of action available to the respondent/complainant to file the impugned complaints.

8) A perusal of the impugned complaints indicate that the respondent/complainant had sent statutory notices of demand to the petitioner through registered post. Learned counsel for the petitioner has

submitted that the petitioner got an information under Right to Information Act, according to which, the notices have not been served upon the petitioner but the same have been served upon some other person. At the stage of taking cognizance of the offences, the learned Magistrate is expected to base his order only on the averments made in the complaint and the documents annexed thereto. The question whether the statutory notices of demand were actually served upon the petitioner is a triable issue and a defence available to the petitioner which could not have been gone into by the learned trial Magistrate at the time of taking cognizance of the complaint and issuance of process against the petitioner. The ground urged by learned counsel for the petitioner is, therefore, without any substance.

9) It has also been contended by learned counsel for the petitioner that there was a commercial transaction between the parties and, as such, the criminal proceedings could not have been initiated by the respondent against the petitioner.

10) In most of the cheque bounce complaints, the basis is invariably a commercial transaction and if submission of learned counsel for the petitioner is accepted, then the provisions contained in Section 138 of the Negotiable Instruments Act would become redundant. Even otherwise, the contention raised by the petitioner can only offer a defence to him which can be considered only after the trial of the case.

11) Apart from the above, the instant petition is not otherwise maintainable as through the medium of instant petition, the petitioner has

challenged as many as four complaints and four separate orders directing issuance of process against him by the trial court. A joint petition in respect of different causes of action is not maintainable. On this ground also, the petition deserves to be dismissed.

12) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

13) A copy of this order be sent to the learned trial court for information.

(SANJAY DHAR)
JUDGE

Srinagar;
25.08.2022
"Bhat Altaf, PS"

