

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

CRM(M) 346/2024 CrIM(829/2024)

MUSHTAQ AHMAD NAIKOO

...Petitioner(s)/Appellant(s)

Through: Mr. Mudasir Bin Hassan, Advocate

Vs

ASHWANI KANT KHANNA

...Respondent(s)

Through:

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER

20.06.2024

In the instant petition, petitioner herein has invoked the jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 seeking quashment of the complaint filed under Section 138/142 of Negotiable Instruments Act titled "Ashwani Kant Khanna v. Mushtaq Ahmad Naikoo and has challenged the order dated 14.12.2022 whereby petitioner has been directed to pay 20% of the cheque amount to the respondent.

Learned counsel for the petitioner has relied upon the judgment passed by the Supreme Court of India in case titled "Indian Bank Association & Ors vs Union of India & Anr decided on 21.04.2014 and has referred to paragraph No. 21 of the said judgment which is reproduced as follows:

21. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-

DIRECTIONS:

1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the

complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.

(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

Reliance is also placed by the learned counsel for the petitioner on the judgment passed by this Court dated 23.12.2022 in case titled Nazir Ahmad Chopan vs. Abdul Rehman Chopan bearing CRM(M) No. 50/2020.

List on 14.08.2024.

In the meantime, subject to objections from other side and till next date of hearing, order impugned dated 02.04.2024 shall remain stayed.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR
20.06.2024
AAMIR