

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

**CRM(M) No. 486/2024**

Gopal Dass

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

Through:- Mr. A. K. Sawhney, Sr. Advocate with  
Ms. Khushboo Sharma, Advocate  
Ms. Tehseena Bukhari, Advocate  
Mr. Harsh Singh, Advocate

V/s

Surinder Kumar

.....Respondent(s)

Through:- None

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

**06.03.2026**

1. Service upon the respondent has not been effected so far. Learned counsel appearing for the petitioner submits that there were four complaints filed under Section 138 of the Negotiable Instruments Act, inter se parties. Out of these, three complaints are still alive and pending before the Trial Court, wherein the respondent/accused is regularly appearing. It is, however, submitted that after the dismissal of the present complaint for want of prosecution, the respondent/accused has deliberately avoided service in the present proceedings.
2. It is further submitted that all the four complaints were being pursued before the same Court. Unfortunately, Complaint No. 114, which came to be listed on 11.12.2019, was dismissed for want of

prosecution vide order dated 12.10.2022. According to counsel for the petitioner, the said dismissal has seriously prejudiced the cause of the petitioner/complainant. It is contended that the petitioner has, therefore, invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking quashment of the said order, on the ground that the complaint could not have been dismissed for want of prosecution at the stage when the matter was still pending for the appearance of the respondent/accused. It is urged that the complaint got segregated from the other three matters which continue to remain pending before the Trial Court, whereas the present complaint alone came to be dismissed for want of prosecution.

3. Learned counsel for the petitioner further submits that the respondent has no real contest to the restoration of the present complaint and, therefore, the ends of justice would be served if the complaint is restored to its original number by exercising the inherent powers of this Court under Section 482 Cr.P.C. It is argued that the complaint ought not to have been dismissed for want of prosecution and the Court below ought to have first secured the presence of the respondent/accused so as to enable it to proceed further in the matter. It is also submitted that although the respondent has been notified about the filing of the present petition, he has chosen not to appear before this Court, whereas he continues to appear in the other three complaints pending between the parties. In such circumstances, it cannot be said that the respondent was unaware of the filing of the present petition. It may well be that

after the dismissal of Complaint No. 114, the respondent assumed that nothing survives for the complainant to pursue further.

4. Be that as it may. During the course of hearing, learned counsel for the petitioner has drawn the attention of the Court to the e-Courts service record, which reveals that four complaints were pending between the parties before the Court of the learned City Judge (JMJC), Jammu, and all the four cases were being tried together. It is further submitted that the hearing dates were subsequently changed and, in the process, the present complaint unfortunately came to be dismissed for want of prosecution.
5. Having considered the submissions made, this Court is of the view that the complaint under Section 138 of the Negotiable Instruments Act ought not to have been dismissed for want of prosecution, particularly when the service of the respondent/accused had not yet been effected. Once a cheque is drawn and the complaint satisfies the statutory requirements of the Negotiable Instruments Act, a presumption arises under Sections 118 and 139 of the Act that the cheque has been issued in discharge of a legally enforceable debt or liability. Thus, the law raises a presumption in favour of the holder of the cheque that the instrument was issued towards a legally enforceable obligation.
6. Although the complainant could have been more vigilant in pursuing the matter, the mere absence of the complainant on a few dates of hearing could not have persuaded the Trial Court to dismiss the complaint for want of prosecution, particularly when the service

of the respondent had not yet been effected. A perusal of the order dated 12.10.2022 shows that it merely records the absence of the complainant and does not advert to the status of the respondent. This lends support to the submission advanced by learned counsel for the petitioner that the matter was still at a nascent stage and the process of securing the presence of the respondent/accused had not even been completed. In such circumstances, the personal appearance of the complainant on each and every date of hearing was not indispensable.

7. Be that as it may. The dismissal of the complaint has resulted in serious prejudice to the complainant, who has been deprived of an opportunity to prosecute the case in accordance with law. In that backdrop, the impugned order has resulted in miscarriage of justice to the petitioner.
8. Accordingly, the present petition is *allowed*. The order dated 12.10.2022 passed by the Trial Court is quashed. Consequently, the complaint is restored to its original number. The Trial Court shall proceed with the complaint in accordance with law. A copy of this order be furnished to the complainant. The parties are directed to appear before the Trial Court on 07.04.2026.

**(SANJAYPARIHAR)**  
**JUDGE**

**JAMMU**  
**06.03.2026**  
Diksha