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Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 275/2025 CrIM(645/2025)

Iftikhar Ashraf Trumboo

..... Petitioner (s)

Through: Mr. Shahid Zameer, Advocate.
V/s

Furqan Ahmad Rather.

..... Respondent(s)

Through: None.

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER
26.05.2025

1. Through the medium of present petition, the petitioner has challenged order dated 19-04-2025, passed by learned Judicial Magistrate 1st Class (Judge Small Causes) Srinagar, whereby the learned Trial Magistrate has refused to record the statement of authorized representative of JK Bank Residency Road on the ground that in the list of witnesses, Manager of the Bank has been mentioned as the witness.
2. Heard learned counsel for the petitioner and perused the record of the case.
3. It appears that a complaint has been filed by the petitioner against the respondent alleging commission of offences under Section 138 NI Act. It also appears that in the list of witnesses annexed to the complaint, Manager Residency Road Branch Srinagar is mentioned as one of the witnesses.

4. The aforesaid witness was summoned on a couple of occasions, by the learned Trial Magistrate but his statement could not be recorded because of non availability of learned counsel for the accused/accused. Thereafter, on 19-04-2025, instead of the Manager his authorized representative, an employee of the Bank appeared before the Court for recording his statement but the learned Trial Magistrate refused to record his statement on the ground that for recording his statement, proper motion has to be made and the accused has to be given a chance to file objections to such motion.

5. I am afraid the approach adopted by the learned Trial Court is not in accordance with law. The Manager of the Bank was sought to be examined by the complainant in order to prove entries in account maintained by the respondent/accused with the Bank, so as to establish that the cheque issued by the accused was dishonored due to insufficiency of funds. For proving the aforesaid fact, it was not necessary for the Branch Manager of the Bank to depose before the learned Trial Court. It is not a case where the Bank Manager had to appear before the court and depose about a fact based upon his personal knowledge, but it is a case where the witness had to make a statement based upon record maintained by the Bank. So any duly authorized employer of the Bank concerned with the

maintenance of record of the Bank, could have proved the entries existing in the account of the accused. Therefore, the approach of the learned Trial Magistrate in refusing to record the statement of the authorized representative of the bank is not accordance with law.

6. For the forging reasons the impugned order passed by the learned Trial Magistrate is not sustainable in law. The same is set aside and the learned Trial Magistrate is directed to record the statement of the Bank Manager or any such authorized representative of the bank who has the access to the records of the bank in the normal course of business. The petition stands disposed of accordingly.
7. Copy of this order be send to learned Trial Magistrate (Judge Small Causes) Srinagar for compliance.

(Sanjay Dhar)
Judge

SRINAGAR

26.05.2025

Sarvar