

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. No. 2875/2009**

% Judgment delivered on: 24.08.2009

Santosh Arora Petitioner
Through: Mr. Vikas Sharma, Advocate

versus

Jai Narain Aggarwal &
State (Govt. of NCT of Delhi) Respondents

Through: Mr. Sanjay Lao, APP for State

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1 . By way of this petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of the summoning order dated 6.4.2009 passed by the court of Ms. Preeti Aggarwal Gupta, Senior Civil Judge-cum-Rent Controller, N-W District, Rohini and for quashing of the complaint i.e. complaint bearing No. 781/2009 filed by the respondent under Section 138 N.I. Act.

2 . Brief facts of the case to deal with the contentions raised by the counsel for the petitioner are as under:-

The respondent No.1 complainant filed a complaint under Section 138 Negotiable Instruments Act against the petitioner as the cheques bearing Nos. 382766 & 382767 drawn on Punjab National Bank, Rohini, Sector-7, Delhi issued by the petitioner against a loan of Rs.1,80,000/- on 1.8.2008 & Rs.2,00,000/- on 7.8.2008 were dishonoured on 24.12.2008 and same was intimated to the respondent No.1 complainant on 26.12.2008. A demand notice was sent to the petitioner on 7.1.2009 and upon failure of the petitioner to pay the amount mentioned in demand notice, a complaint was made by the respondent No.1 and the Senior Civil Judge-cum-Rent Controller, Rohini Courts, issued summons to the petitioner. Aggrieved with the same present petition has been filed by the petitioner.

3. Counsel appearing for the petitioner submits that the summoning order dated 6.4.2009 suffers from illegality and irregularity as the trial court has not appreciated the fact that the demand notice sent by the respondent/complainant itself does not meet the requirement of the proviso of Section 138 Negotiable Instruments Act. The contention of the counsel for

the petitioner is that there has to be specific demand based on the dishonoured cheques and once the particulars of the cheques are not given in the demand notice no complaint based on such a demand notice can be filed by the complainant. Another argument taken by the counsel for the petitioner is that even in the evidence the correct particulars of the dishonoured cheques have not been given by the respondent and therefore, on account of the same also the complaint filed by the respondent/complainant is liable to be quashed. In support of his argument counsel for the petitioner placed reliance on the judgment of this court reported in **2005 [1] JCC [NI] 97 Pramod Vijay Khullar Vs. State and Anr.** and the judgment of the **Punjab and Haryana High Court** reported in **2003 [1] JCC [NI] 77 M/s Kumar Rubber Industries Kapurthala Vs. Sohan Lal.**

4 . I have heard ld counsel for the petitioner at considerable length and gone through the record.

5 . A perusal of the demand notice sent by the complainant/respondent no doubt does not give the complete particulars of the dishonoured cheques. However, in para 1 of the notice the complainant has pointed out that the petitioner

had borrowed a loan from the complainant in the month of August i.e. for a sum of Rs.1,80,000/- on 1.8.2008 and Rs.2,00,000/- on 7.8.2008. The demand notice further states that the petitioner had issued two cheques for the payment of the said amount and the said cheques were drawn on Punjab National Bank, Sector-7, Rohini, Delhi-85. Para 4 of the demand notice further mentions the fact of the said cheques being dishonoured after presentation on 24.12.2008 with the remarks "Funds Insufficient". Although the demand notice should have been more specific to clearly disclose the exact particulars of the dishonoured cheques but yet in the absence of the same and also on account of the fact that the amount of the two cheques were clearly mentioned with the name of the bank. Therefore, it cannot be said that requirement as envisaged under the proviso of Section 138 N.I. Act is not met with

6 . Notice cannot be viewed in a hypertechnical manner. The purpose of giving notice is to bring it to the notice of the drawer of the cheque that the cheque issued by him has been dishonoured and also to put him on guard with regard to making of payment covered by the cheque within the time prescribed so as to avoid prosecution. If all the necessary particulars, viz.,

date of issue of cheque, amount of cheque, name of the bank on which cheque is drawn etc. then mere non-mentioning of cheque number or giving incorrect cheque number would not be fatal. Depending upon the facts and circumstances of the case, if the details given by the complainant are sufficient enough to bring it to the notice of the drawer of cheque that the cheque issued by him is dishonoured then non-mentioning or wrong mentioning of cheque number would in itself be not fatal to the case of the complaint.

7. It is not in dispute that the complainant is the payee of the said two cheques and he alone had made the demand of the money of the said cheques by giving a notice in writing. It is also not in dispute that the petitioner is the drawer of the two cheques. It is also not in dispute that the amount of loan amount in respect of the transaction was duly mentioned and it was also stated that the cheques of the same amount were issued by the petitioner. The reliance placed by the counsel for the petitioner on the judgment of this court in **Pramod Vijay Khullar (Supra)** is not applicable to the facts of the present case as there the Court was dealing with a situation where the demand notice deals with the dues of the company along with the assured

profits and in such situation the court found that the notice sent by the complainant does not satisfy the requirements of Section 138 N.I. Act but such a situation does not exist here. Another judgment cited by the counsel for the petitioner in **Sohal Lal's case (Supra)** is also not applicable to the facts of the present case as therein in the complaint itself number of the cheques were not correctly mentioned and the court held that the cheques are the very basis and the foundation of the complaint and in the absence of the same the complaint cannot be held maintainable. In the present case it is not in dispute that the complainant has duly mentioned the correct details of the dishonoured cheques. The complainant has also filed the original dishonoured cheques on record and therefore, it cannot be said that the complainant failed to lay the said foundation in the complaint case. The contention of the counsel that in the pre-summoning evidence the cheques numbers have been differently mentioned is also of no substance. There is no merit in the present petition. The same is dismissed.

August 24, 2009
pkv

KAILASH GAMBHIR, J.