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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.07.2021

PRONOUNCED ON : 30.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

CrI.A.No.47 of 2016

M/s.Kamatchi Metals,
Rep., by its Managing Partner,
Mr.V.S.Venkatesan

...Appellant

-Vs-

1.M/s.A.R.Die Casts India Pvt., Ltd.,
Represented by its Director, Mr.Rajan

2.Mr.Rajan,
Director,
M/s.A.R.Die Casts India Pvt., Ltd.,

... Respondents

Prayer: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, to call for the records pertaining to the order dated 08.12.2015 passed in C.C.No.2765 of 2013 on the file of the Madras Metropolitan Fast Track Court No.1, Allikulam, Chennai - 3 and set aside the order of acquittal dated 08.12.2015 passed thereon acquitting the respondents herein from the charge for an offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.G.Saravanan

For Respondents : Mr.T.Saikrishnan
for M/s.Sai Bharath

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai. in Calender Case No.2765 of 2013, dated 08.12.2015.

2. The brief facts of the case are as follows:

i) The appellant is the manufacturer of the Quality Aluminum Alloy Ingots. The respondent - Company purchased



certain materials from the appellant through various invoice, the details of which, are mentioned in the tabulated column:-

S.No.	Date	Invoice No.	Amount
1	27.09.2012	631	Rs.4,91,240/-
2	04.10.2012	653	Rs.5,36,065/-
3	10.10.2012	677	Rs.5,45,880/-
4.	31.10.2012	737	Rs.3,90,238/-
5.	09.11.2012	771	Rs.10,94,460/-
		Total	Rs.30,57,883/-

ii) Towards payment for such purchase, the respondent-Company issued following cheques to the appellant.

S. No.	Date	Cheque No.	Bank	Amount
1	12.11.2012	746948	SBI Maniyakaram Palayam Branch, Coimbatore	Rs.4,91,240/-
2	19.11.2012	746949	-do-	Rs.5,36,065/-
3	25.11.2012	746988	-do-	Rs.5,45,880/-
4	15.12.2012	746999	-do-	Rs.3,90,238/-
5	26.12.2012	991956	-do-	Rs.5,00,000/-
6	29.12.2012	991957	-do-	Rs.5,94,460/-
			Total	Rs.30,57,883/-

iii) When the appellant presented the cheque referred in Serial No.1, for encashment, the same was dishonoured on account of 'insufficient funds'. Therefore, he informed the same to the respondent-Company and they paid entire cheque amount referred in Serial No.1 in three installments. As far as the cheques referred in Serial Nos.2 and 4 are concerned, those cheques were also dishonoured and when the same was brought to the notice of the respondent-Company, they settled only a sum of Rs.3,50,000/-, towards the cheque referred in Serial No.4, in three installments and left the balance of Rs.40,238/- unpaid. Insofar as cheque referred in Serial.No.2 is concerned, the respondent - Company has not paid any amount, despite their promise to repay the same.



iv) Subsequently, at the request of the respondent-Company, on 19.02.2013, the appellant presented the cheques referred in Serial Nos.3, 5 and 6 for encashment. However, the same were returned for ''want of funds'' on 22.02.2013. Therefore, on 15.03.2013, the appellant issued a legal notice to the respondent - Company, which was received by the respondent - Company on 19.03.2013. After the receipt of the said notice, the respondent - Company neither complied with the demand nor replied to the said notice. Therefore, appellant, having left with no other option, filed a complaint against the respondent-Company under Section 138 of Negotiable Instruments Act, 1881, (hereinafter referred as 'N.I. Act') before the Metropolitan Magistrate No.II, Egmore and the same was numbered as C.C.No.2765 of 2013.

v) The Court below, after hearing both the parties, passed a detailed judgment on 08.12.2015, thereby, dismissing the case on the ground that in the legal notice issued to the respondent-Company, dated 15.03.2013, the appellant has not specifically mentioned his claim in terms of Section 138(b) of the N.I Act. Further, the Court below recorded that in the said legal notice, the total outstanding amount, due and payable by the respondent - Company to the appellant was mentioned as Rs.22,16,643, i.e., towards the cheque amounts referred in Serial Nos.2, 3, 5, 6 plus Rs.40,238/-, which is the balance amount to be paid towards cheque referred in Serial.No.4, whereby, the appellant called upon the respondent - Company to pay the amount covered by the cheques along with Rs.1000/- towards costs of the notice within 15 days from the date of receipt of the legal notice. Whereas, in the complaint dated 03.05.2013, given before the Metropolitan Magistrate, the appellant prayed for an order of compensation of Rs.17,40,340/-. Since the amount, which the appellant claimed for was not mentioned properly in the legal notice, the Court below dismissed the complaint stating that the legal notice does not satisfy the requirements of Section 138 of the N.I Act.

vi. Aggrieved over the said judgment, the appellant herein filed the present Criminal Appeal.

3. Mr.G.Saravanan, the learned Counsel appearing for the appellant would submit that the Court below has wrongly construed that the legal notice was issued demanding a sum of Rs.22,16,643/- along with interest at the rate of 24%, whereas, in the complaint, the appellant had claimed to clear the cheque amount alone. Further, he submitted that at page No.4 of the legal notice, in the first paragraph, the amount claimed by the appellant was clearly mentioned as follows:-

"My client states that in so far as
the dishonour of cheques mentioned in



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items 3, 5 and 6 is concerned, your conduct in having issued the cheques towards a subsisting liability and allowed the same to be dishonoured is an offence under Section 138 of the Negotiable Instruments Act for which you are liable to be prosecuted and imprisoned."

3.1 By referring to the above said paragraph, the learned counsel submitted that the demand was made in connection with cheques referred in Serial Nos.3, 5 and 6 alone. Further, in paragraph No.2 of the legal notice also, the appellant clearly mentioned the serials numbers in respect of the dishonoured cheques, viz. ,Serial Nos.3, 5 and 6. The Court below, without considering all these aspects, dismissed the appellant's complaint wholly by stating that the legal notice was not issued in terms of Section 138 (b) of the N.I Act. Therefore, he submitted that the judgment of the Court below is liable to be set aside and the respondent - Company is liable to be prosecuted in terms of Section 138 (b) of the N.I Act. Further, in support of his submission, he relied upon the judgment rendered by the Hon'ble Apex Court, in the case of (Suman Sethi vs Ajay K.Churwal & Anr) reported in (2002) 2 SCC 380.

4. Per Contra, Mr.T.Sai Krishnan, the learned counsel appearing for the respondent - Company would submit that the legal notice, dated 15.03.2013 was issued by the appellant only with an intention to recover a sum of Rs.22,16,643/- along with the interest. Though, in the said notice, he highlighted the dishonoured cheques referred in Serial Nos.3, 5 and 6, he had not made any specific demand to make the payment in respect of those dishonoured cheques. This aspect was rightly considered by the Court below and dismissed the complaint, and the same warrants no interference by this Court. Therefore, he prayed for the dismissal of the appeal. Further, in support of his submission, he relied upon the following judgments rendered by the Hon'ble Apex Court:-

(i) Suman Sethi vs. Ajay K.Churwal & Anr reported in (2002) 2 SCC 380.

(ii) K.R.Indira vs.Dr.G.Adinarayana reported in (2003) 8 SCC 300.

and

(iii) Rahul Builders vs. Arihant Fertilizers & Chemicals & Anr reported in (2008)2 SCC 321.

5. Heard the learned counsel for the both sides and perused the materials available on record.



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the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

7.1 A perusal of the above provision particularly, clause (b) makes it clear that, the payee or the holder in due course of the cheque, as the case may be, makes a demand for payment of the said amount of money by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, he is entitled to invoke Section 138 N.I.Act. It is pertinent to mention here that the phrase contained in clause (b) of Section 138 N.I. Act, i.e. "demand for the payment of the said amount" would only mean and refer to "dishonoured cheque amount". In the present case, in the legal notice issued by the appellant, dated 15.03.2013, the total cheque amount referred in Serial Nos.3, 5 and 6, would be around a sum of Rs.16,40,340/-, but, nowhere, in the notice, does the appellant raise a demand for payment of Rs.16,40,340/- towards the dishonoured cheques referred in Serial Nos. 3, 5 and 6, instead, the appellant raised only the following demand, in the last para at page No.3, :-

"My client states that as on date you are due and liable to pay Rs.22,16,643/- towards dues and you are also liable to pay interest @ 24% per annum over the said amount in view of your default in repayment."

7.2 Thus, it is clear that the appellant not only demanded the cheque amount referred in Serial Nos.3, 5 and 6, but also demanded the amount towards the dishonoured cheques referred in Serial Nos.2 and 4, which were time barred. Further, at page No.4 of the legal notice, the appellant stated as follows:

"My client states that in so far as the dishonour of cheques mentioned in items 3, 5 and 6 is concerned, your conduct in having issued the cheques towards a subsisting liability and allowed the same to be dishonoured is an offence under Section 138 of the Negotiable Instruments Act for which you are liable to be prosecuted and imprisoned.

In these circumstances my client



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hereby calls upon you to pay the amount covered by the cheques along with Rs.1000/- towards cost of this notice within fifteen days from the date of receipt of this notice failing compliance take notice that my client will be constrained to initiate appropriate criminal prosecution besides Civil proceedings against you holding you liable for all costs and consequences thereof."

7.3 A perusal of the above extracted paragraphs of the legal notice shows that the appellant called upon the respondent-Company to make payment towards the dishonour of the cheques referred in Serial Nos.3, 5 and 6, failing which, the respondent-Company will be prosecuted under Section 138 of the N.I Act. Further, the appellant, in the penultimate para at Page 4, called upon the respondent - Company to pay the amount covered by the cheques along with Rs.1000/- within 15 days from the date of receipt of the legal notice. Thus, it is clear that, in the last para, at page No.3 of the said legal notice, the appellant made a claim for a sum of Rs.22,16,643/-, whereas, in the last para, at page No.4, the appellant has purposely not mentioned the serial numbers in respect of the dishonoured cheques, but had mentioned only about the amount covered in respect of the cheques. Therefore, the demand made by the appellant would be considered as omnibus demand made against the respondent- Company and cannot be entertained under Section 138 of N.I. Act.

7.4 Further, it has to be stated that, the legal notice issued in terms of Section 138 of N.I Act should be crystal clear, without any ambiguity and there should not be any omnibus demand, and in case, if any omnibus demand is made by the complainant, then, the same cannot be treated as a notice issued in accordance with the provision of Section 138 (b) of N.I Act.

7.5 In the given background of the case, it would be beneficial to refer to a judgment rendered by the Hon'ble Apex Court, in the case of Suman Sethi vs Ajay K.Churwal & Anr (cited supra) relied upon by both the counsel for the parties and the relevant portion of the judgment is reproduced as hereunder:

"It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by



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way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

7.6 In the aforesaid judgment, the Hon'ble Apex Court clearly held that in the legal notice, if an omnibus demand is made without specifying what was due under the dishonoured cheque, then, the notice might well fail to meet the legal requirement of Section 138 NI Act and may be regarded as bad. Thus, the law laid down by the Hon'ble Apex Court in the above said case is squarely applicable to the present case on hand, for the reason that the appellant has not raised a specific demand but only an omnibus demand, as, he has purposely not mentioned the amount in respect of the dishonoured cheques, towards which, payment has to be made by the respondent-Company but mentioned only the serials numbers covered in respect of the dishonoured cheques, which would clearly show that the appellant has demanded the amount not only in respect of the cheques referred in Serial Nos.3, 5 and 6, which were dishonoured, but also the amount in respect of the cheques, which were time barred, viz., cheques referred in serial Nos. 2 and 4 and taking into consideration of all these aspects, the Court below rightly refused to entertain the claim of the appellant by holding that the legal notice does not satisfy the legal requirement of Section 138 (b) of the N.I Act. In this context, the one other judgment relied upon by the learned counsel for respondents would be of useful to refer, viz., the judgment rendered by the Hon'ble Apex Court in the case of K.R.Indira vs.Dr.G.Adinarayana (cited supra), wherein, it is held as follows:

"What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for



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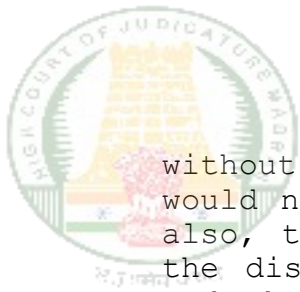
the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which exposes the drawer for being proceeded against under Section 138 of the Act. That being the position, the ultimate conclusion arrived at by the trial court and the High Court does not call for interference in these appeals, though for different reasons indicated by us. The appeals are, accordingly dismissed."

7.7. A perusal of the above judgment in K.R.Indira's case (cited supra) it is clear that, if the demand for an amount covered by dishonoured cheque is conspicuously absent in the notice issued, then, the notice in question is imperfect. The law laid down by the Hon'ble Apex Court, in K.R.Indira's case (cited supra) is squarely applicable to the facts of the present case, as in the present case also, the amount demanded by the appellant in respect of the dishonoured cheques was not conspicuously mentioned in the notice.

7.8. This Court would also like to refer to the last and final judgment relied upon by the learned counsel appearing for the respondent - Company, in the case of Rahul Builders vs. Arihant Fertilizers & Chemicals & Anr (cited supra) and the relevant para from the said judgment reads as follows:-

"Para No.10 The statute envisages application of the penal provisions. A penal provision should be construed strictly; the condition precedent wherefor is service of notice. It is one thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, but the same would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law. Respondent 1 was not called upon to pay the amount which was payable under the cheque issued by it. The amount which it was called upon to pay was the outstanding amount of bills."

7.9 A perusal of the above judgment in Rahul Builders's case (cited supra) would also show that the omnibus notice,



without specifying the amount due under the dishonoured cheques would not subserve the requirement of law. In the present case also, the exact amount, which the appellant claimed for towards the dishonoured cheques was not mentioned in the legal notice, and the appellant has mentioned only the serial numbers, viz., Serial Nos.3, 5, and 6 in respect of the dishonoured cheques. Therefore, this Court is of the view that the legal notice issued by the appellant does not satisfy the ingredients contemplated under Section 138 (b) of the N.I Act. and the Court below having considered all these aspects in a proper perspective, rightly refused to entertain the complaint by holding that the legal notice issued by the appellant is not in accordance with the provision of Section 138 (b) of the N.I Act and accordingly, dismissed the complaint. Therefore, such a well reasoned judgment passed by the Court below does not warrants any interference by this Court.

8. In the upshot, this Criminal Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

1.The Metropolitan Magistrate Court,
(Fast Track Court No.I)
Allikulam, Chennai-600 003.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras-600 104.

+1 CC to M/s.T.Saikrishnan, Advocate, Sr.No.36898(17/05/2022)

Cr1.A.No.47 of 2016

RGN(CO)
CB(23/08/2021)