

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3117 OF 2021

1. Rajeshkumar S/o Mukeshbhai Vala,
Age 29 years, Occ. Business
2. Manishbhai s/o Kanubhai Jalondhara
Age 30 years, Occ. Business
Both R/o Ridam paper Produces,
260, Kamalpark Society, L.H. Road,
Surat (Gujrat)

... Applicants

Versus

1. Balu s/o Kashinath Kuwar (Patil),
Age 68 years, Occ. Pensioner
2. Harish S/o Balu Patil
Age 40 years, Occ. Service,
Both R/o. Plot No.15, Tirupatinagar,
Nandurbar, Tq. and Dist. Nandurbar

... Respondents

....
Mr. Rajendra G. Hange, Advocate for the Applicants
Mr. Ruchir S. Wani, Advocate for Respondent Nos. 1 and 2
....

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 1 AUGUST, 2022

PRONOUNCED ON : 5 AUGUST, 2022

PER COURT :-

. Heard finally with consent of both the sides.

2. The applicants by invoking provisions under Section 482 of the Code of Criminal Procedure Code are seeking quashing of proceedings of summary trial case No. 1897 of 2020 pending before the Chief Judicial Magistrate, Nandurbar.

3. Heard Mr. Rajendra Hange, learned counsel for the applicants and Mr. Ruchir Wani, learned counsel for the respondents.

4. Mr. Hange, learned counsel for the applicants invited my attention to the copy of the demand notice issued by the respondents dated 15.07.2020. He submitted that according to the case of respondents/original complainants, present applicants had issued two cheques; one for Rs.2,50,000/- and another for Rs.2,00,000/-. The total comes to Rs.4,50,000/-. Those cheques came to be dishonoured. According to Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act" for the sake of convenience). The notice was issued by the respondents demanding Rs.5,00,000/- and not for Rs.4,50,000/-. The notice is defective in the eye of law. The proceedings initiated by the

respondents against the applicants under Section 138 of the Act is liable to be quashed since the demand made in the notice is more than the amount of cheques allegedly dishonoured. Mr. Hange, therefore, urged to quash the entire proceedings initiated by the respondents under Section 138 of the Act.

5. Mr. Hange, learned counsel for the applicants has placed his reliance on following two citations in support of his argument.

(i) *K.R. Indira Vs. Dr. G Adinarayan* reported in *(2003) 8 SCC 300*.

(ii) *Suman Sethi Vs. Ajay K. Churiwal and another* reported in *2000 ALL MR (Cri.) 645*.

6. Per contra Mr. Ruchir Wani, learned counsel for the respondents also invited my attention to the demand notice dated 15.07.2020. He submitted that the entire transaction between the parties was for Rs.5,00,000/- towards the purchase of machinery. The respondents had paid Rs.5,00,000/- to the applicants as shown in detail in para Nos. 8 and 9 of the said notice. The machinery was not delivered to the respondents, as such, the respondents

realized that they have been cheated and they put criminal law in motion by lodging F.I.R. at Nandurbar Police Station against the applicants for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code. Thereafter, an amicable settlement arrived between the parties and accordingly two cheques were given to the respondents; one for Rs.2,50,000/- and another for Rs.2,00,000/-. Both the cheques were dishonoured. The details have been given in the demand notice. Since the entire transaction between the parties was for Rs.5,00,000/-, as described in the demand notice, accordingly, the respondents had demanded Rs.5,00,000/- from the applicants. The demand notice is not defective in the eye of law.

7. Mr. Wani, learned counsel for the respondents has placed his reliance on following two citations.

- (i) *Durairaj Mills Limited through managing Director Vs. State of Gujrat* reported in *2017 SCC OnLine Guj 1973*.
- (ii) *Tathagat Exports Pvt. Ltd. And others Vs. PEC Limited* reported in *MANU/DE/ 273/ 2020*.

8. I have considered the submissions of the learned counsel for both the sides. According to the requirement of Section 138 of the Act, respondents/original complainant had issued demand notice to the applicants before initiating the criminal prosecution in the court of law. The demand notice is the foundation of criminal prosecution. Certainly, the demand notice must be read as a whole and not in a piecemeal manner.

9. On studying the demand notice dated 15.07.2020 very carefully, one would find all the details of transaction of purchasing the machine. The respondents had given Rs.5,00,000/- to the applicants for payment of machinery. There is dispute about delivery of machinery, whether it is old or new machinery. The F.I.R. came to be lodged against the applicants at Nandurbar Police Station for cheating and criminal breach of trust. Subsequently, an amicable settlement seems to have been arrived between the parties. As a result, two cheques were issued by the applicants; one for Rs.2,50,000/- and another for Rs.2,00,000/-. The total comes to Rs.4,50,000/-. Even though the total amount of above said two cheques comes to Rs.4,50,000/- ,the entire

transaction between the parties was for Rs.5,00,000/- as stated in detail in the demand notice. Accordingly, in concluding para, the respondents had demanded Rs.5,00,000/-.

10. In the above premise, whether the demand notice issued by the respondents/original complainant can be said to be defective in the eye of law.

11. Mr. Hange, learned counsel for the applicants has placed heavy reliance in case of *K.R. Indira Vs. Dr. G. Adinarayan* (supra). In the cited case, the trial Court came to the conclusion after recording of evidence that the complainants fail to prove that the cheques were issued by way of repayment of the loans advanced by the complainants and accepted the contention of the accused that blank cheques given by him in good faith were misused. In the present case, the evidence is yet to begin before the magistrate. The Hon'ble Supreme Court in the said case has held that 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 and

ultimately held that notice in question was imperfect not because it had any further or additional claims as well but did not specifically contain any demand of the cheque amount. The non-compliance with such a demand only being the incriminating circumstances which exposes the drawer for being proceeded against under Section 138 of the Act. The facts of the cited case and the facts of the case in hand are quite distinguishable and as such reliance placed by Mr. Hange on this citation is not any way helpful to the applicants.

12. In case of *Suman Sethi Vs. Ajay K. Churiwal and another* (supra), the Hon'ble Supreme Court has made clear that in the notice, demand has to be made for cheque amount. The notice cannot be faulted if any other sum by way of interest, cost etc. is also separately indicated. In the present case, the respondents/original complainant have demanded the cheque amount of Rs.4,50,000/- in addition to Rs.50,000/- in view of their entire amount of transaction. As such, notice cannot be said to be defective in the eye of law *prima facie*.

13. In case of *Durairaj Mills Limited through managing Director Vs. State of Gujrat* (supra), the Hon'ble Single Judge of the Gujrat High Court after considering the decision of *Suman Sethi Vs. Ajay K. Churiwal and another* (supra), held that notice in question cannot be termed as imperfect because there is a discrepancy in the amount demanded. While concluding, the Hon'ble Single Judge of the Gujrat High Court held that these are highly disputed questions of fact and they can be looked into by the trial Court.

14. In case of *Tathagat Exports Pvt. Ltd. And others Vs. PEC Limited* (supra), the Hon'ble Single Judge of Delhi High Court after considering the decision of *Suman Sethi Vs. Ajay K. Churiwal and another* (supra), held that the complaint cannot be quashed under Section 482 of the Code of Criminal Procedure. The defence raised by the opposite side requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.P.C.. As such, petition came to be dismissed.

15. Having regard to the legal position made clear by the Hon'ble Supreme Court in case of *K.R. Indira Vs. Dr. G. Aninarayan* (supra) and *Suman Sethi Vs. Ajay K. Churiwal and another* (supra), it is not a fit case to invoke powers under Section 482 of the Cr.P.C. to quash the entire proceedings initiated by the respondents/original complainant under Section 138 of the Act. Whether the demand notice fulfills requirement of law would be decided by the learned Magistrate after recording the evidence and after hearing both the sides. The law on quashing of F.I.R./criminal proceedings is well settled in view of the landmark decision of the Hon'ble Supreme Court in case of *State of Haryana Vs. Ch. Bhajan Lal and others* reported in *A.I.R. 1992 S.C. 604*. No case is made out to quash the proceedings.

ORDER

(i) The application moved by the applicants stands dismissed.

(ii) The observations made by this court are *prima facie* in nature and confined to the adjudication of present application under Section 482 of Cr.P.C. The learned trial court shall not get influenced by the said observations made by this court and decide the matter on its own merits.

(iii) The criminal application is disposed of accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

16. After pronouncing the order, Mr. Hange, learned counsel for the applicants seeks four weeks time to challenge the order before the Apex Court.

17. Heard Mr. Ruchir Wani, learned counsel for respondent Nos. 1 and 2.

18. Three weeks time is granted to the applicants to challenge the order.

19. The order passed by this Court is stayed for three weeks from today.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane