125 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-61559-2023
Date of decision: 07.12.2023

JASBIR SINGH

...PETITIONER

V/S

HARCHAND SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

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HARPREET SINGH BRAR J. (ORAL)

The petitioner approached this Court by filing the present petition under Section 482 of Cr.P.C. seeking quashing of complaint No.394/2017 (Annexure P-1) titled as ***Harchand Singh*** *versus* ***Jasbir Singh,*** as well as the summoning order dated 01.07.2017 (Annexure P-2) along with all consequential proceedings emanating therefrom including orders dated 08.08.2023 (Annexure P-5) and 25.10.2023 (Annexure P-6), vide which, application filed by the petitioner for dismissal of the complaint and discharge has been partly allowed.

2. The brief facts of the case as discernible from the record are that the respondent has filed a complaint against the petitioner for an offence punishable under Section 138, 139, 141 and 142 of the Negotiable instruments Act (hereinafter referred to as 'the Act') on 01.07.2017. The respondent has led his preliminary evidence and after appreciating the same, the learned trial Court passed summoning order dated 01.07.2017, whereby, the petitioner was summoned to face trial under Section 138 of the Act. The petitioner appeared before the learned trial Court and moved an application for dismissal of the complaint as well as for his discharge on 24.05.2023 (Annexure P-3). The

complainant/respondent filed a reply to the application filed by the petitioner. The learned trial Court after examining the issue, partly allowed the application of the petitioner and dismissed the complaint with regard to cheque Nos.000045 and 000046 and at the same time, served the notice of accusation upon the petitioner in respect of cheque No.000047 vide order dated 08.08.2023 (Annexure P-5). Thereafter, the petitioner has approached this Court by filing the present petition seeking quashing of the complaint (supra) along with summoning order, as well as the orders dated 08.08.2023 (Annexure P-5) and 25.10.2023 (Annexure P-6).

3. Learned counsel for the petitioner *inter alia* contends that the complainant/respondent has very conveniently suppressed the date of dishonour of the cheques and two out of three cheques were barred by limitation. Learned counsel further referred to the legal notice dated 01.05.2017 (Annexure P-7) given by the respondent/complaint in his preliminary evidence and submitted that the perusal of the same would indicate that a vague and omnibus demand of Rs.60,00,000/- has been made and the same is contrary to the statutory provisions contained in proviso (b) of Section 138 of the Act. In the absence of any specific demand with respect to the third cheque, the legal notice served upon the petitioner, cannot be considered a valid legal notice in terms of the proviso (b) of Section 138 of the Act. As such, the same suffers from incurable illegality and which vitiates the entire proceedings.

4. Learned counsel for the petitioner further relies upon the judgments passed by the Apex Court in ***M/s Rahul Builders*** *versus* ***M/s Arihant Fertilizers & Chemical 2007(4) RCR (Criminal) 973; Suman Sethi*** *versus* ***Ajay K. Churiwal 2000(1) RCR (Criminal) 780*** *and*

DashrathbhaiTrikambhail Patel *versus* ***Hitesh Mahendrabhai Patel 2023 (1) SCC 578*** to contend and unless and until a notice is served in conformity with Section 138(b) of the Act. The complaint pursuant to such invalid notice would not be maintainable. The emphasis is placed on para 10 of the judgment in ***M/s Rahul Builders*** (supra) is reproduced hereunder:

> *"10. Service of a notice, it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the proviso. When the proviso applies, the main Section would not. Unless a notice is served in conformity with Proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. The Parliament while enacting the said provision consciously imposed certain conditions. One of the conditions was service of a notice making demand of the payment of the amount of cheque as is evident from the use of the phraseology "payment of the said amount of money". Such a notice has to be issued within a period of 30 days from the date of receipt of information from the bank in regard to the return of the cheque as unpaid. 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 No. 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 amounts of bills, i.e., Rs. 8,72,409/-. The noticee was to respond to the said demand. Pursuant thereto, it was to offer the entire sum of Rs. 8,72,409/-. No demand was made upon it to pay the said sum of Rs. 1,00,000/- which was tendered to the complainant by cheque dated 30.04.2000. What was, therefore, demanded was the entire sum and not a part of it."*

4. Reliance has also been placed upon para 8 of the judgment in ***Suman Sethi*** (supra), which is reproduced hereunder:

> *"8. 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 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 et c. 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."*

5. The reliance has further been placed upon para Nos.23 and 24 of the judgment in ***DashrathbhaiTrikambhail Patel*** *(supra)* (page 24) is reproduced hereunder:

> *"23. This Court has interpreted the phrase 'the said amount of money' as it finds place in proviso (b) to Section 138. In Suman Sethi v. Ajay K Churiwal10, the appellant issued a cheque for rupees twenty lakhs in favour of the first respondent. The cheque was dishonoured. A demand notice for an amount higher than the cheque amount was issued. A two-Judge Bench of this Court held that the demand has to be made for the 'said amount', which is the cheque amount. It was also observed that the question of whether the notice demanding an amount higher than the cheque amount is valid would depend on the language of the notice:*
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> *"8. 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 way of interest, cost etc. whether 9 (2008) 2 SCC 321 10 (2000) 2 SCC 38 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."

24. In KR Indira v. G. Adinarayana11, it was held that the notice did not demand the payment of the cheque amount but the loan amount. It was observed that for the purposes of proviso (b), the amount covered in the dishonoured cheque must be demanded. In Rahul Builders (supra), the drawee demanded the payment of rupees 8,72,409 which was higher than the sum of rupees 1,00,000 represented in the cheque. It was reiterated that the phrase 'payment of the said amount' in proviso (b) would mean the cheque amount. Since the demand in the notice was not severable as the cheque amount could not be severed from the demand for the additional amount, it was held that it was an omnibus notice."

7. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the legal notice dated 01.05.2017 (Annexure P-7) was served upon the petitioner, by specifically calling upon him that he has executed a written compromise with the respondent and issued three post dated cheques bearing Nos.000045, 000046 and 000047, which were to be presented by the respondent on the target dates. A specific recital is made in the legal notice with regard to the account number of the respondent and amount of Rs.20,00,000/- pertaining to each cheque. The petitioner has also given the particulars of each cheque in a tabulated form in para 7(i) at page 4 of the paper book, which is reproduced as under:

S.no	Cheque/dated	Amount	Bank
1.	000045 Dt. 14.1.2017	20,00,000/	HDFC Bank, Branch Phase X, Mohali from A/c

			50100031552722
2.	000046 dt. 31.1.2017	20,00,000/	HDFC Bank, Branch Phase X, Mohali from A/c 50100031552722
3.	000047 dt. 28.02.2017	20,00,000/	HDFC Bank, Branch Phase X, Mohali from A/c 50100031552722

8. The ratio of law laid down in ***Rahul Builders*** (supra) would indicate that one of the conditions for launching prosecution under Section 138 of the Act, would be service of notice making the demand of payment (the amount of cheque) as evident from the use of expression payment of the "said amount" of money. If the demand is made of other incidental expenses like cost and interest along with cheque amount, the Apex Court has categorically held that it would not mean that notice is vague and capable of two interpretations. The facts of the case in ***Rahul Builders*** (supra) indicate that notice was served upon the accused for an amount of Rs.8,72,409/-, whereas, the cheque amount was Rs.1,00,000/-.

9. The ratio of law in ***Suman Sethi*** (supra) clearly indicates that it is a well settled principle of law that the notice has to be read as a whole and the said amount i.e. the cheque amount has to be made in the demand notice. Where, in addition to said amount, there is also a claim by way of interest, cost etc., whether the notice is bad would depend upon the language of the notice. If in a notice while giving up break up of the claim the cheque amount, interest, damages etc. are separately specified and these amounts are severable, as such, a demand notice would not be considered to be an invalid notice.

10. The contention of the learned counsel for the petitioner is that the notice is vague and omnibus and no specific demand is made is liable to be rejected in view of the observation made by the Apex Court in ***M/s Rahul Builders*** *(supra),* ***Suman Sethi*** *(supra).*

11. Reference can be made to para (12) of ***M/s Rahul Builders*** *(supra)* in which reliance is placed upon observations made in ***K.R. Indira*** *versus* ***Dr. G. Adinarayana, 2003(4) RCR (Criminal) 966 : 2004(1) Apex Criminal 696 : [(2003)8 SCC 300]*** would indicate that 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 the payment of the cheque amount and 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 NI Act. Similar observation was made by the Apex Court in ***DashrathbhaiTrikambhail Patel*** *(supra)*.

12. The perusal of the legal notice (Annexure P-7) tested on the ratio of law laid down in the aforementioned judgments would clearly indicate that the demand cannot be termed as vague and omnibus. The specific demand of Rs.20,00,000/- has been clearly indicated as the amount of each cheque bearing Nos.000045, 000046 and 000047. It is not a case where the cheques amount is conspicuously missing from the demand notice issued in the present case. Para 9 of the judgment passed by this Court in case bearing CRM-M No.36565 of 2019 titled as ***Balkour Singh*** *versus* ***State of Punjab and others*** is reproduced hereunder:

> *"As soon as the complainant discharges the burden to prove that the instrument (cheque/promissory note) was executed by the accused, the rules of presumptions under Sections 118 and 139 of the N.I. Act help the complainant and shift the burden on the accused. The presumptions so raised in favour of the complainant will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. In the present case, admittedly, the respondent No.2-complainant has fulfilled the ingredients of Section 138 of the NI Act to create presumptions as*

enunciated under Sections 118 and 139 of the NI Act in his favour and therefore, the burden to rebut the same shifts on the petitioner-accused."

13. In view of the discussion made above this Court finds no merit in the present case.

Dismissed.

(HARPREET SINGH BRAR)
JUDGE

December 07, 2023
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No