



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: October 31, 2023

% *Pronounced on: November 20, 2023*

+ **CRL.M.C. 981/2023 & CRL.M.A. 3731/2023**

M/S SAMKIA ENTERPRISES & ORS. Petitioners

Through: Mr. Vinay Jaidka and Mr. Deepak
Diwan, Advocates.

Versus

RANJEET BEGWANI Respondent

Through: Mr. Hemant Kumar, Mr. Shivam
Janger, Mr. M. Saxena, Mr.
Venratesh Joshi, Mr. Bhavishya
Mohantiya, Advocates

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 [*CrPC*] seeking quashing of the Complaint Case being CT Case No.3301/2017 titled as *Ranjeet Begwani v. M/s Samkia Enterprises & Ors.*, filed by the respondent/ complainant against the petitioners/ accused under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 [*NI Act*], pending before the learned Metropolitan Magistrate (NI Act) West-04, Tis Hazari Courts, Delhi [*learned MM*].

2. As per the facts, on 14.12.2016, the petitioner nos.2 and 3, on behalf of all the petitioners, had handed over to the respondent four post dated

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cheques being cheque no.069291 dated 15.12.2016 for Rs.4,00,000/-, cheque no.069292 dated 15.01.2017 for Rs.4,00,000/-, cheque no.069293 dated 15.02.2017 for Rs.4,00,000/- and cheque no.069294 dated 15.03.2017 for Rs.4,50,000/-, collectively for an amount of Rs.16,50,000/-, all drawn on Oriental Bank of Commerce, Old Rajinder Nagar Branch, Delhi. Upon immediate presentation of the first cheque, bearing no.069291 dated 15.12.2016 for Rs.4,00,000/- by the respondent, it was returned dishonoured for the reason “*Payment Stopped*”. Thereafter, on the assurance of the petitioners, all the three remaining cheques were also presented by the respondent, but they too were returned dishonoured vide return memo dated 24.03.2017 with the same reason i.e., “*Payment Stopped*”. In consequence thereof, a Legal Notice dated 17.04.2017 was issued by the respondent, however, since it was returned undelivered, the respondent proceeded to file a complaint against the petitioners for not honouring the instruments valued at Rs.16,50,000/- before the learned MM.

3. After issuing summons to the petitioners on 30.05.2017, notice under Section 251 Cr.P.C. was framed qua petitioner no.2 on 25.03.2019 by the learned MM. Thereafter, though the petitioners filed an application on 02.19.2019 seeking quashing of the said complaint on the ground that the Legal Notice did not represent the correct amount, however, the same was withdrawn by them on 05.01.2023. This resulted in filing of the present petition for quashing of the subject complaint by the petitioners on 09.02.2023.

4. Learned counsel for the petitioners submitted that in both, the Legal Notice as also the subject complaint, the respondent has deliberately failed



to mention that the cheque no.069291 for Rs.4,00,000/- dated 15.12.2016 stood dishonoured way back on 23.12.2016 and that the same was reflected in the account statement of the respondent. He thus submitted that as the Legal Notice in respect of the said first cheque was time barred, the common Legal Notice for all the four cheques did not fulfil the requirements of Section 138 NI Act, and hence the subject complaint emanating from the said Legal Notice was not maintainable and is liable to be quashed.

5. Then, relying upon *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*, (2023) 1 SCC 578, *Rahul Builders v. Arihant Fertilizers & Chemicals*, (2008) 2 SCC 321 and *K.R. Indira v. G. Adinarayana (Dr)*, (2003) 8 SCC 300, learned counsel for the petitioners submitted that the Legal Notice cannot be taken to be only qua the three subsequent cheques as the same was pertaining to the entire amount of Rs.16,50,000/-, which included the amount of all the four cheques.

6. Besides that, learned counsel for the petitioners also submitted that all the four cheques forming part of the subject complaint were issued by the petitioner no.2 from his individual account and in his individual capacity and they do not pertain to the account of the petitioner no.1/ partnership firm and the petitioner no.3 was neither the signatory of the said cheques, nor the said cheques pertain to her in any manner. Thus, relying upon *Dilip Hariramani v. Bank of Baroda*, 2022 SCC OnLine SC 579, he submitted that the petitioner no.1 partnership firm and the petitioner no.3 cannot be held vicariously liable for the acts of petitioner no.2 and no offence has been made out under Section 141 of the NI Act.

7. *Per contra*, learned counsel for the respondent submitted that it is



clear from the subject complaint as also the pre-summoning evidence led by the respondent before the learned MM that the Legal Notice as also the subject complaint was based only on the three subsequent cheques dishonoured on 24.03.2017 and since the Legal Notice was issued within the statutory time period and the subject complaint thereafter was also filed within the statutory period, the subject complaint is not barred by limitation.

8. Learned counsel for the respondent also submitted that even as per Section 219 CrPC, only three cheques could have been clubbed in a single complaint.

9. Learned counsel for the respondent further submitted that in any event, since the Legal Notice was never delivered to the petitioners, and it was only on the issuance of summons by the learned MM that the petitioners came to know of the present dispute, they cannot claim that the said Legal Notice was defective and caused misrepresentation. Thus, relying upon *C.C. Alavi Haji v. Palapetty Muhammed & Anr.* 2007(6) SCC 555, he submitted that in the absence of receipt of notice, the summons issued by the learned MM were to be considered as the statutory notice, and since in the present case, the same was only with respect to the three subsequent cheques, as is also evident from the notice under Section 251 CrPC issued to the petitioner no.2, there is no misrepresentation qua the liability of the petitioners.

10. Thereafter, relying upon *Rallis India Limited v. Poduru Vidhya & Ors.* (2011) 13 SCC 88, learned counsel for the respondent submitted that since all the three cheques were issued by the petitioner no.2 as a partner and agent of the petitioner no.1 partnership firm, vide Section(s) 18, 19,



25 and 26 of the Partnership Act, 1932, the petitioners are jointly and severally liable for the dishonour of cheques and to make the payments to the respondent.

11. Learned counsel for the respondent then submitted that the petitioners have nowhere denied their liability towards the respondent and by raising hyper-technical issues, the petitioners are only attempting to delay the proceedings. Despite the summons in the subject complaint being issued way back on 30.05.2017, the petitioners never challenged it and moreover the application filed by the petitioners seeking dropping of the proceedings was also withdrawn by them on 05.01.2023 before the learned MM.

12. Learned counsel for the respondent lastly submitted that vide the present petition, the petitioners are forum shopping as instead of approaching the revisional court under Section 397 CrPC, the petitioners have approached this Court under Section 482 CrPC, which is impermissible in law.

13. This Court has heard the learned counsel for the parties at considerable length and has also perused the documents on record and gone through the judgements cited by both sides.

14. Since it is settled law that the NI Act and the provisions therein, including that of Section 138 NI Act are pertaining to a Special Act, they have to be mandatorily complied with. For the purpose of proper adjudication, the provisions of Section 138 NI Act involved herein are reproduced hereunder:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.-



Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰ [within thirty days] of the receipt of information by him from the bank regarding 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.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

15. Keeping the aforesaid provisions in mind and as per the facts involved, though the first cheque issued on 15.12.2016 was dishonoured on 23.12.2016 and the Legal Notice dated 17.04.2017 qua it was barred by limitation, however, *admittedly*, since all the subsequent three cheques issued on 15.01.2017, 15.02.2017 and 15.03.2017 were dishonoured thereafter only on 24.03.2017, the same Legal Notice dated 17.04.2017 qua them was well within the prescribed statutory period. The said Legal Notice being valid, the subject complaint qua the said three cheques also being well within the statutory time period, is also very much valid.

16. It is further pertinent to note the settled law qua the essentials of a



valid Legal Notice, as laid down by the Hon'ble Supreme Court in **Suman Sethi v. Ajay K. Churiwal**, (2000) 2 SCC 380 which is as under:-

“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 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.”

17. The Hon'ble Supreme Court in **K.R. Indira (supra)**, following **Suman Sethi (supra)** has also reiterated the essentials of a valid Legal Notice and has held as under:

“11. Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In Suman Sethi case [(2000) 2 SCC 380 : 2000 SCC (Cri) 414] on considering the contents of the notice, it was observed that there was specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to it, in the form of expenses incurred for clearance and notice charges were also made, did not vitiate the notice. In a given case if the consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand were also found to have been made may not invalidate the same.....”

18. Similarly, the Hon'ble Supreme Court in **Rahul Builders (supra)**, considering the judgments mentioned hereinabove, has also once again reiterated the same and has held as under:-

“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. 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 (sic 15) 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.....”

19. In the present case, as the Legal Notice dated 17.04.2017 issued by the respondent specifically entails the specific details qua the dates and amounts of all the respective four cheques involved, separately, there can be no dispute qua maintainability of the subject complaint qua them before the learned MM. The said Legal Notice dated 17.04.2017 issued by the respondent is to be read as a whole and not in piecemeal. Under such circumstances and in view of the settled legal position reiterated by the Hon’ble Supreme Court in the aforesaid judgments, inclusion of one cheque qua which the Legal Notice was barred by limitation, alongwith three other cheques qua which the Legal Notice was well within the prescribed time frame, cannot and does not render the Legal Notice invalid qua the three cheques which are very much within limitation.

20. In view of the aforesaid, and specifically as neither there is any omnibus demand made by the respondent in the Legal Notice issued



within the stipulated time period, nor there is any illegal amount demanded by him, in the facts of the present case, the subject complaint is *per se* maintainable in the eyes of law. It is also worth noting that the learned MM vide order dated 30.05.2017 issued summons to the petitioners and then *rightly* framed notice under Section 251 CrPC dated 25.03.2019 to the petitioner no.2 qua the said three cheques only. The said notice under Section 251 CrPC is reproduced as under:-

“NOTICE

*I, Tista Shah, M.M. (West-04), Delhi do hereby serve notice u/s 251 upon you accused no.2 Ravish Malhotra S/o Sh. Ramesh Kumar Malhotra Partner of the accused no.1 aged 39 years, office at M/Samkia Enterprises, 32B, Main Pusa Road, New Delhi-110005 that in discharge of your legally enforceable debt towards the complainant Ranjeet Begwani, you had issued one cheque, **First Cheque bearing no.069292 dt. 15.01.2017 for Rs.4,00,000/-, Second Cheque bearing no.069293 dt. 15.02.2017 for Rs.4,00,000/-, Third Cheque bearing no.069294 dt. 15.03.2017 for Rs.4,50,000/-** said cheques were drawn one Oriental bank of Commerce in favour of the complainant which was returned unpaid for the reason **“Payment Stopped by Drawer”** vide cheque returning memo dated 24.03.2017 despite notice of demand dt.17.04.2017 served upon you, you failed to make the payment of the said cheque amount within the stipulated time and thereby you committed an offence punishable under section 138 Negotiable Instrument Act, 1881 and within my cognizance. I hereby direct that you be tried by this Court on the above said notice.”*

21. Not only that, as the pre-summoning evidence led by the respondent



before the learned MM is also based only on the three subsequent cheques dishonoured on 24.03.2017, there is no occasion for this Court to interfere with the proceedings before the learned MM by allowing the present petition.

22. Interestingly, despite the fact that it is the case of the petitioners that they never received the aforesaid Legal Notice, they have, to somehow take benefit of the same, placed reliance on it, only after issuance of summons by the learned MM and after framing of notice under Section 251 CrPC. The same cannot be raised before this Court at this stage belatedly and being not the right forum to do so. In any event, in the absence of receipt of the Legal Notice, the summons issued by the learned MM are to be considered as the statutory notice [*Re.: C.C. Alavi Haji (supra)*]. As such, since the same in the present case is only qua the three subsequent cheques, there is no occasion for this Court to find any fault with the same.

23. The rest of the contentions qua the petitioner nos.1 and 3 being wrongly impleaded and the effect thereof, it is trite law that the same is a matter of trial and is to be agitated before the Court of inception being that of the learned MM and certainly not before this Court. No party, much less the petitioner herein, can be allowed to agitate the same before this Court and call for a trial thereon. Moreover, the petitioners have not denied anywhere that the petitioner no.1 is a partnership firm and/ or that petitioner nos.2 and 3 are its partners. The petitioners have not denied their liability towards the respondent qua any of the three cheques for which the pre-summoning evidence has been led before the learned MM.

24. The records also reveal that though the learned MM issued the



summons in the complaint way back on 30.05.2017, the petitioners sat over it as they never chose to challenge it. They instead filed an application seeking dropping of the proceedings before the learned MM belatedly, only to withdraw it on 05.01.2023. Rather, the petitioners have belatedly chosen to question the legality of the Legal Notice after framing of notice under Section 251 CrPC after another prolonged period of four years which shows that the petitioners are merely trying to delay the proceedings before the learned MM. Not stopping there, the petitioners have approached this Court by way of the present petition under Section 482 CrPC, after an elongated gap of six years. The fact that the petitioners have chosen to approach this Court by way of the present petition under Section 482 CrPC instead of approaching the revisional Court by invoking the provisions of Section 397 CrPC also speaks of the conduct of the petitioners and does not bestow any confidence in their favour.

25. Considering the aforesaid, this Court finds that the reliance placed by the learned counsel for the petitioners upon the judgments cited are of no relevance and are in fact, of no assistance to them.

26. Considering the factual matrix involved and the legal position as it stands today, this Court has no hesitation in holding that the present petition seeking quashing of the Complaint Case being CT Case no.3301/2017 titled as ***Ranjeet Begwani v. M/s Samkia Enterprises & Ors.***, filed by the respondent/complainant against the petitioners/ accused under Section 138 read with Section 141 of the NI Act, pending before the learned Metropolitan Magistrate (NI Act) West-04, Tis Hazari Courts, Delhi, is devoid of merit and deserves dismissal.

27. Accordingly, the present petition alongwith the applications, if any,



is dismissed and in view of the conduct of the petitioners, with a token costs of Rs.25,000/- (*Rupees Twenty Five Thousand Only*) to be paid to the respondent within a period of two weeks. Compliance report thereof be filed before the learned MM within a week thereafter.

SAURABH BANERJEE, J.

NOVEMBER 20, 2023/So