



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO. 3302 OF 2023

Satish Sambhajirao Gaikwad
VERSUS
Sanjay Ramchandra Pawar

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Advocate for Applicant : Mr. Garje Nisargraj B.
Advocate for Respondent : Mr. H.V. Tungar

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 10th MAY, 2024.

PER COURT :-

1. This application is under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the proceedings filed against the applicant under Section 138 of the Negotiable Instruments Act, 1881 in which the process is issued against the applicant in S.C.C. No. 134 of 2023 dated 4.3.2023.

2. Learned advocate for the applicant has pointed out the grounds of objection in the application that the notice was sent by the complainant to this applicant is not legal, correct and in accordance with law. Cheque No. 041484 for Rs.13,40,000/- was dishonoured and in the demand notice another cheque bearing No. 041484 and No. 041485 for Rs.9,60,000/- are mentioned. Thus, the notice is not legal and the requirements of Section 138 of N.I. Act are not complied with. The necessary pleadings are not made in the complaint. Therefore, it is prayed to quash and set aside the

proceedings.

3. Learned advocate for the applicant, in support his contentions, has placed reliance on the following authorities:-

i) ***Babulal Nainmal Jain vs. Khimji Ratansha Dedhia, reported in ALL MR 1998-4-287***, in which it is held that “the court found considerable force in the contention that when the complaint discloses that the cheque was returned not because of any reason attributable to the defrauding of the credit or to the lack of credit etc. it is illegal on the part of the Magistrate to issue summons on the assumption that prima facie case has been disclosed against the petitioner under section 138 of the Negotiable Instruments Act. Hence, the complaint was quashed.

ii) ***Arshad Abdul Wahid Qureshi vs. Asif Abdul Wahir Qureshi and another*** (Writ Petition No. 558 of 2019, decided on 20.4.2023), para 13 of the same reads as under:-

“13. It is true that the notice needs to be construed liberally. However, in case the omnibus demand was made however the cheque amount and other amount are severable then notice can be termed as valid. However, in the facts of the case, undisputedly cheque amount of five dishonored cheques is of Rs. 1,88,99,000/- and the demand was made for payment of Rs. 2,58,04,000/- which exceeds the cheque amount of dishonored cheques.”

iii) ***Upasana Mishra vs. Trek Technology India Pvt. Ltd.*** (2023

SCC Online SC 1740). Para 5 of the same reads as under:-

“5. The relevant paragraph of the decision in Suman Sethi’s case (supra) is extracted for a proper disposal of this case:

“8. It is 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. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "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 dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad.

9. This Court had occasion to deal with Section 138 of the Act in Central Bank of India & Anr. v. M/s. Saxons Farms & Ors., JT (1999) 8 SC 58 and held that the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. Though in the notice demand for compensation, interest, cost etc. is also made drawer will be absolved from his liability under Section if he makes the payment of the amount covered by the cheque of which he was aware within 15 days from the date of receipt of the notice or before complaint is filed. As therein, some other sums were indicated in addition to the amount of cheque, it was, therefore, not held

to be a case where the dispute might be existing in respect of the entire outstanding amount.” (Emphasis added)”

4. Learned advocate for the respondent strongly opposed the application and submitted that the applicant has filed this application only with an intention to avoid the payment. He submitted that though the number of another cheque is mentioned in the notice issued to the applicant, the fact of dishonour of particular cheque is clearly mentioned in the notice. However, only because of mistake of the advocate that description of both cheque numbers and demanded that amount, it is not illegality to discharge the accused from criminal liability under Section 138 of N.I. Act.

5. Learned advocate for the respondent, in support of his contentions, has placed reliance on the following authorities:-

i) ***Lafarge Aggregates & Concrete India Pvt. Ltd. vs. Sukarsh Azad & Anr.*** (2014 ALL MR (Cri.) 1518 (S.C.). Para 9 of the said authority reads as under:-

“9. The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedy, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his

account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (I) refer to drawer (ii) exceeds arrangements and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability.”

- ii) ***Shri Amit Ashok Thepade and Ors. vs. M/s. Shah Nagindas Manchharam & Sons and Anr.*** (2008 ALL MR (Cri.) 1920). Para 3 of the same reads as under:-

“3. In my view, prima facie, the notice of demand cannot be faulted since the amount of the cheque has been mentioned. What the Supreme court has stated is that, if the amount of the dishonoured cheque is not specified in the demand notice, then it would not meet the legal requirement. However, in the present facts, it appears that the amount for which the cheque was drawn has been mentioned in the notice of demand which also calls upon the petitioners to pay other dues as well. The judgments in the case of Suman Sethi vs. Ajay K. Churiwal and Anr. reported in (2000) 2 SCC 380: [2000 ALL MR (Cri.) 645 (S.C.) and in the case of United Credit Ltd. vs. Agro Sales India & Ors. reported in 2001 ALL MR (Cri) 1492 cited by the learned advocate for the respondents are apt.

- iii) ***Ramnarayan Madanlal Khandelwal vs. Proprietor, Daulat***

Enterprises (2005 ALL MR (Cri.) 3118) Para 7 and 8 of the same reads as under:-

“7. All these cases referred to the demand for more amount than what was mentioned in the cheque. While holding that the demand notice must be for the amount of cheque and the demand should not be either for more amount or for lesser amount, the Courts held that what is necessary is a specific demand. The Court went to the extent of observing that even the demand notice in addition to the statutorily envisaged demand may not invalidate the notice. The Court quashed the proceedings only when it was found that the notice in question is imperfect. Thus from the above cases no ratio to the effect that a demand for more or less amount than the amount of cheque is invalid can be deduced.

8. If we peruse the notice of demand dated 11-5-1999 in the present case it would be seen that the petitioner has given all the particulars of the liability of the respondents, the amount of cheque issued by the respondents, the part payment made by the respondents and the amount which remained to be paid by them. Thus there is no ambiguity in the notice of demand in the present case. If the submission of Shri. Patwardhan is to be accepted then it will have to be held that despite part payment made by the respondents, the petitioner was obliged to make demand of the entire amount of cheque which would obviously be improper and impermissible.”

iv) **Umakant Dattatraya Chakkarwar vs. State of Maharashtra and another**, (2018 ALL MR (Cri.) 4577). Para 6 of the same reads as under:-

“6. In the present case, according to the complaint filed by respondent no.2, two cheques dated 21/10/2014 and

27/10/2014 were issued for Rs.80,000/- each in favour of respondent no.2 and they were so issued in discharge of the debt of Rs.1,60,000/- owed by the petitioner to respondent no.2. The complaint also discloses that the first cheque was dishonoured on 25/10/2014 and the second cheque on 28/10/2014. But the fact remains that these cheques were issued for discharging one and the same debt by the petitioner, as alleged in the complaint. Therefore, even though they were dishonoured on different dates, such dishonour would not constitute separate causes of action and it cannot be said that two separate offences were so committed as not to be part of one and the same transaction. The reason being that they were issued for discharging one and the same debt and to the same party and that they were founded on the same basic cause of action, which was the debt of Rs.1,60,000/- alleged to be incurred by the petitioner towards respondent no.2. Under Section 220(1) of the Code of Criminal Procedure, if in one series of acts which are so connected with each other as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. As just stated, in the present case, the acts of dishonour of two cheques have been committed by the same person, they have been committed also against the same person and they are connected with each other in a manner as to form the same transaction, which was the transaction of discharge of overall debt of Rs.1,60,000/-. Therefore, I do not see any illegality or arbitrariness or perversity in the impugned order by which the application vide Exh.31 filed by the petitioner has been rejected.”

6. Perused the notice sent by the complainant to the applicant alongwith the complaint. It is admitted fact that only one cheque bearing No. 041484 for an amount of Rs.13,40,000/- is dishonoured.

That amount is mentioned in the notice. There is description of another cheque in the same notice. So it is composite notice, however, in view of the law laid down by the Hon'ble Supreme court in the case of ***Suman Shethi and Upasana Mishra (cited supra)*** by the applicant if in a notice while giving the break up of the claim of the cheque amount, interest, damages etc. are separately specified, other such claims for interest, costs etc. would be superfluous and these additional claims would be severable- and will not invalidate the notice.

7. The object of issuing prior notice is to give an opportunity to the proposed accused to pay that amount. Merely because there is description of another cheque in the notice entire notice cannot become illegal. It is lack skill of Advocacy. Some times, junior advocate may commit mistake. Mistake of fact is not illegality. For that client shall not suffer. The law cannot be for defeating justice on technicalities. Thus the disputed notice is not illegal by which right of complainant/respondent is seriously affected and prejudice is caused to him.

8. Considering the facts of this case and ratio laid down in the authorities cited supra by the advocate for the respondents, there is no any illegality or arbitrariness as well as perversity in issuing the disputed notice. The legal requirements of issuing notice is thus complied with by the respondent.

9. For the reasons stated above and ratio in the authorities cited by the learned advocate for the applicant those are not helpful to the applicant and therefore, it cannot be relied upon.

10. In view of the above, there is no substance in the grounds of objection raised by the applicant for quashing of the said proceeding filed under Section 138 of Negotiable Instruments Act. The application therefore, deserves to be rejected. It is rejected.

(SANJAY A. DESHMUKH, J.)

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