

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1626 OF 2023

Ritaben A Patel and Others ...Petitioners

Vs.

Mahendrasinh Thakorsinh Rathod and ...Respondents
Others

**SAYALI
DEEPAK
UPASANI**

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Mr. Girish R. Agrawal with Ms. Naina P. Boraste with Mr.
Shubham Jangam, for Petitioners.

Mr. Ayush Kedia with Mr. Vishal Rathod, for Respondent
No. 1.

Mr. Shailesh Suresh Ghag, APP for State-Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 28th FEBRUARY, 2024.

ORDER:-

1) The petitioners take exception to an order dated 30th August, 2022, passed by the learned Judicial Magistrate First Class, Dadra and Nagar Haveli, Silvassa whereby process was issued against the petitioners for an offence punishable under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 ("the Act, 1881").

2) The respondent-complainant operates a Stone Quarry. Petitioner No. 3 – Hotel Hill View is a partnership firm. Petitioner Nos. 1 and 2 are the partners of Petitioner No. 3. At the request of petitioner No. 2, the complainant had provided financial assistance to the accused in various tranches. Towards repayment of part of the debt, the accused had drawn cheque bearing No.996171 in the sum of Rs.15,00,000/- payable on 24th June, 2022. On presentment, the said cheque was returned uncashed with the remark “DRAWERS SIGNATURE DIFFER”. Thereupon the complainant addressed a demand notice on 19th July, 2022, calling upon the accused to pay the amount covered by the said cheque and also demanded payment of Rs.93,00,000/-, which, the complainant alleged, was due and payable by the accused. Eventually, the complainant lodged a complaint for an offence punishable under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881. By the impugned order dated 30th August, 2022, the learned JMFC was persuaded to take cognizance and issue process.

3) The learned Counsel for the petitioners submitted that the order of issue of process suffers from a manifest error in law as the demand notice was not in conformity with the provisions contained in Clause (b) of the proviso to Section 138 of the Act,

1881. Since the complainant demanded an amount which was far in excess of the amount covered by the dishonoured cheque, and had no connection with the subject cheque, the demand notice was illegal. Therefore, the complaint deserves to be quashed.

4) I have carefully perused the Petition, the complaint and the demand notice. I am afraid to accede to the submission on behalf of the petitioner-accused, that the notice in question does not satisfy the requirement envisaged by Clause b of the proviso to Section 138 of the Act, 1881. In paragraph No. 23 of the demand notice, there is a clear and categorical assertion that the complainant called upon the accused to make payment of the said cheque amount i.e. Rs.15,00,000/-. Indeed, the complainant also professed to direct the accused Nos. 1 and 2 to make payment of Rs.93,00,000/-, which the accused allegedly owed to the complainant. However, the said further demand, by itself, does not render the notice illegal and invalid.

5) Legal position is no longer *res integra*. The decision of the Supreme Court in the case of **Suman Sethi Vs. Ajay K. Churiwal and Others**¹, affords a complete answer to the controversy

1 (2000) 2 SCC 380

sought to be raised on behalf of the petitioners. The observations in paragraph Nos. 7 to 10 read as under:-

“...7. There is no ambiguity or doubt in the language of Section 138. Reading the entire Section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in notice under clause (b) to the proviso, the demand has to be made for the cheque amount. According to Dr. Dhawan, the notice of demand should not contain anything more or less than what is due under the cheque.

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.”

(emphasis supplied)

6) The learned Counsel for the petitioners would urge that the aforesaid judgment in the case of **Suman Sethi** (supra) was clarified in the case of **Vijay Gopala Lohar Vs. Pandurang**

Ramchandra Ghorpade and Others². In the latter case, the Supreme Court, on facts, found that the decisions in the cases of **Suman Sethi (supra)** and **Rahul Builders Vs. Arihant Fertilizers and Chemicals and Others³** were not applicable to the facts of the said case as the loan amount and the cheque amount was the same i.e. Rs.50,000/-. The observations in paragraph Nos. 5 and 6 read as under:-

“...5. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellant submitted that the High Court committed a serious error in passing the impugned judgment so far as it failed to consider:

- (i) Section 138 of the Act does not postulate a 15 days' notice;
- (ii) Non-payment of the amount of cheque being Rs. 1,00,000/- being a part of the demand sum of Rs. 8,72,409/-, no exception thereto could be taken.

6. Mr. Sanjeev Sachdeva, learned counsel appearing on behalf of Respondent No. 1, on the other hand, supported the judgment contending that the notice in question does not subserve the requirements of Section 138 of the Act...”

7) Reliance was also placed on the decision of the Supreme Court in the case of **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and Others⁴**. In the said case also, the

2 (2020) 14 SCC 806

3 (2008) 2 SCC 321

4 AIR 2022 SC 4961

Supreme Court adverted to the decision in the case of **Suman Sethi** (supra).

8) It does not appear that in any of the cases cited on behalf of the petitioners, the principle enunciated in the case of **Suman Sethi (supra)** has been deviated from.

9) The object of notice under Clause (b) of the proviso to Section 138 of the Act, 1881 is to give the drawer an opportunity to make the amends. If the drawer is put to notice that the cheque has been dishonoured and a demand for the amount covered by the dishonoured cheque is made, then the fact that the notice contains further demands by way of interest, charges and costs etc. does not invalidate the notice. The principle of severability operates. If the notice contains demand of the amount covered by the cheque and also other demands but other demands can be severed from the said demand of the amount covered by the cheque, then no fault can be found with such notice.

10) The aforesaid principle has been reiterated in the order dated 12th December, 2023 in the case of **Upasana Mishra Vs. Trek Technology India Pvt Ltd in SLP (crl) No. 9062 of 2023**, wherein the Supreme Court reiterated that if in a notice while giving the break up of the claim i.e. 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. **Suman Sethi** (supra) was followed by the Supreme Court in **Upasana Mishra** (supra) as well.

11) Applying the aforesaid principle to the facts of the case, the demand notice cannot be faulted at.

12) I am, therefore, not inclined to entertain the Petition.

13) The Petition stands dismissed.

[N. J. JAMADAR, J.]