

126 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-21115-2024
Decided on:-29.04.2024

Simranpreet Singh

....Petitioner..

VS.

Satnam Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashok Sharma Nabhewala, Advocate with
Ms. Gauri Sharma, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present petition, prayer has been made for quashing of complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short, NI Act”) as well as summoning order dated 08.05.2023 passed by the Court below, whereby the petitioner has been summoned.

2. On account of dishonour of cheque bearing No.803624 dated 31.01.2023, amounting to Rs.5,50,000/-, issued by the petitioner, the respondent-complainant filed a complaint under Section 138 of the NI Act. Relevant portion from the complaint is extracted hereunder:-

“1.

2. *That, on 17.09.2021, the accused borrowed Rs.21,999.97 paisa through money gram from son of the complainant who is working at abroad i.e. Australia. On 02.02.2022 the accused Received Rs. 99,999.79 paisa from son of the complainant through money gram. On 07.02.2022 the accused received Rs. 1,00,000.23 paisa from son of the complainant, through money gram. Thereafter, on demand of the accused son of the complainant got transferred an*

amount of Rs. 50,000/- to the account of the accused from account of his friend Manpreet Singh Arora of Amritsar on 24.02.2022 On 02.03.2022 the complainant paid Rs. 1,00,000/- to the accused which he transferred in his account from with SBI Tibri Tehsil & Distt. Gurdaspur. Again on 04.03. 2022 the complainant paid Rs. 1,00,000/- to the accused which he transferred in account of the accused from his account from SBI Tibri Tehsil and Distt. Gurdaspur. On 30.03.2022 the complainant paid Rs. 40,000/- to the accused which he transferred in account of the accused from his account from SBI Tibri Tehsil and Distt. Gurdaspur. In this way the accused has received an amount of Rs. 5,12,000/- from the complainant and his son on different dates for domestic needs.

3. *That, 11.12.2022 the accused came to house of the complainant at about 7.30 P.M. and in order to make the payment of above mentioned money and to discharge his legally enforceable liabilities issued postdated cheque No. 803624 dated 31.01.2023 for Rs. 5,50,000/- (Rs. Five Lakh Fifty thousand only) and received an amount of Rs. 38,000/- in cash from the complainant. The above said cheque pertains to State Bank of India, branch Guru Nanak Nagar, Street No.12 Patiala, issued by the accused from his account No. 55149585935 in favour of the complainant in order to make the payment of amount borrowed by him from the complainant and his son and to discharge his debt liability. At the time of issuance of cheque you the accused assured the complainant that the accused assured that he has sufficient amount in his account to meet the requirements of the cheque. The cheque is duly signed & issued by the accused. The complainant accepted the cheque in a good faith.*

4.

5.

6.

7. *That, thereafter, the complainant again approached the accused & told him about dishonouring of the cheque and also requested to either make payment of cheque amount in cash or*

through demand draft. But the accused told the complainant that due to unavoidable circumstances, the accused could not keep sufficient money in his account and requested the complainant to present the cheque after 10 days and by that time he will have deposited sufficient amount in his account to meet requirements of the cheque. In the meantime the complainant also came to know that the accused has transferred an amount of Rs. 70,000/- on 31.12.2022 and Rs. 50,000/- on 31.01.2023 in the account of the complainant.

8. *That, thereafter, the complainant again presented the cheque in question on 10.03.2023 after deducting the above mentioned amount of Rs. 1,20,000/- which the accused has transferred in the account of the complainant. Endorsement to this effect has also been given on back side of the cheque. But the cheque issued by the accused was again dishonoured and was returned to bankers of the complainant with remarks of "Funds Insufficient vide memo dated 10.03.2023....."*

3. In the aforesaid complaint, vide order dated 08.05.2023, the petitioner was summoned to face trial under Section 138 of the NI Act. By way of present petition, aforementioned complaint as well as the summoning order has been assailed while invoking Section 482 Cr.P.C.

4. Learned counsel for the petitioner submits that Section 138 of the NI Act could only be invoked in case there is any legally enforceable debt, whereas, in the present case in paragraph 2 of the complaint, the complainant included the amount which were never borrowed/paid to the petitioner but were given to his friends. He further submits that the only borrowed amount was in fact Rs.2,40,000/-, which even stood paid as on the date of filing the complaint i.e. 28.03.2023, thus, section 138 of the NI Act could not have been invoked. To support, the details of payments as pointed

out by learned counsel from the contents of the complaint are as follows:-

Sr. No.	Date	Amount
1	31.12.2022	Rs.70,000/-
2	31.01.2023	Rs.50,000/-
3	27.03.2023	Rs.50,000/-
4	28.03.2023	Rs.70,000/=

He further submits that on the basis of a post dated cheque dated 31.01.2023, which was handed over merely for the purpose of security, Section 138 of the NI Act could not have been invoked, the same having been misused.

4.1 Learned counsel for the petitioner also relies upon a decision of Hon’ble Apex Court in case **“Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and another” 2023(1) SCC 578**, to contend that once part payment already stood paid to the complainant before the filing of the complaint, in the absence of any endorsement in terms of Section 56 of the NI Act, the cheque in question could not have been used for the purpose of invoking Section 138 thereof. Reference has been made to paras No. 21, 25, 29 and 30 of the aforesaid judgment, which are reproduced hereunder:-

“21. The High Court while dismissing the appeal against acquittal held that the notice issued by the appellant is an omnibus notice since it does not represent a legally enforceable debt. Relying on the judgment of this Court in [Rahul Builders v. Arihant Fertilizers & Chemicals](#)⁹, it was held that the legal notice was not issued in accordance with proviso (b) to [Section 138](#) since it did not represent the ‘correct amount’. The appellant has contended that the requirement under [Section 138](#) is to send a notice demanding the ‘cheque amount’. It was contended that the offence under [Section 138](#) was made out since the appellant in the statutory notice demanded the payment of rupees twenty lakhs

which was the 'cheque amount'.

25. *[Section 138](#) creates a deeming offence. The provisos prescribe stipulations to safeguard the drawer of the cheque by providing them the opportunity of responding to the notice and an opportunity to repay the cheque amount. The conditions stipulated in the provisos need to be fulfilled in addition to the ingredients in the main provision of [Section 138](#). It has already been concluded above that the offence under [Section 138](#) arises only when a cheque that represents a part or whole of the legally enforceable debt at the time of encashment is returned by the bank unpaid. Since the cheque did not represent the legally enforceable debt at the time of encashment, the offence under [Section 138](#) is not made out.*

29. *Under [Section 56](#) read with [Section 15](#) of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note 12 (2008) 3 KLJ 784 13 ILR (2010) III Delhi 459 14 [2018 (2) GLH 105] appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of [Section 138](#). Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under [Section 56](#) of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under [Section 138](#) would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.*

30. *In view of the discussion above, we summarise our findings below:*

(i) *For the commission of an offence under [Section 138](#), the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*

(ii) *If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;*

(iii) *When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in [Section 56](#) of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under [Section 138](#) will stand attracted;*

(iv) *The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and*

(v) *The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount.*

The conditions stipulated in the provisos to [Section 138](#) need to be fulfilled in addition to the ingredients in the substantive part of Section

138. Since in this case, the first respondent has not committed an offence under [Section 138](#), the validity of the form of the notice need not be decided."

5. I have heard learned counsel for the petitioner and gone through the paper book as well as law cited. I am unable to find substance in the

submissions made on behalf of the petitioner.

6. In the present case, the contention raised on behalf of the petitioner that the amount borrowed by him was only Rs.2,40,000/- and not Rs.5.50 lakhs, cannot be gone into while exercising powers under Section 482 Cr.P.C., the same being a factual aspect which needs to be gone into during trial and any adjudication on this account at this stage may amount to premature determination thereof. In this regard, the respondent-complainant needs to be afforded opportunity to lead evidence so as to prove his version given in the complaint. Reference in this regard can be made to a decision rendered by the Hon'ble Supreme Court, in case of ***“Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi)”***, 2022 (2) ***Recent Criminal Report (871)***. Relevant paragraphs 16 & 17 therefrom are reproduced hereunder:-

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the

balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

7. As regards the contention raised on behalf of the petitioner in terms of Section 56 of the NI Act, the relevant dates relied upon are as follows:-

Sr. No.	Relevant dates	Particulars
1	02.03.2022	Petitioner borrowed Rs.1 lakh
2	04.03.2022	Petitioner borrrwed Rs.1 lakh
3	30.03.2022	Petitioner borrowed Rs.40,000
4	31.12.2022	Petitioner repaid Rs.70,000
5.	31.01.2023	Petitioner repaid Rs.50,000/-
6	31.01.2023	Cheque in question
7	20.02.2023	Cheque presented/return memo
8	27.02.2023	Cheque presented/return memo
9.	10.03.2023	Cheque presented/return memo
10	11.03.2023	Demand notice under Section 138 served by the respondent to the petitioner
11.	27.03.2023	Petitioner repaid Rs.50,000
12.	28.03.2023	Petitioner repaid Rs.70,000
13.	28.03.2023	Complaint filed
14.	08.05.2023	Summoning order

A perusal of the aforestated facts and circumstances show that by 31.01.2023, petitioner paid Rs.1,20,000/- to the respondent-complainant. The cheque dated 31.01.2023 was presented for encashment for the first time and was returned unpaid vide memo dated 20.02.2023. It was again presented and returned unpaid on 27.02.2023 and 10.03.2023. The demand notice under Section 138 of the NI Act was issued by the respondent-complainant through his counsel on 11.03.2023, with a clear stipulation that

a sum of Rs.1,20,000/- stood paid by the petitioner. The relevant extract from the notice dated 11.03.2023 is extracted hereunder:-

“In the meantime my client also came to know that you the noticee have transferred an amount of Rs.70,000/- on 31.12.2022 and Rs.50,000/- on 31.01.2023 in the amount of my client.

That, thereafter, my client again presented the cheque in question on 10.03.2023 after deducting the above mentioned amount of Rs.1,20,000/- which the noticee has transferred in the amount of my client.”

Another payment of Rs.1,20,000/- was made by the petitioner to respondent, much after the issuance of demand notice on 27.03.2023 and 28.03.2023 in the shape of Rs.50,000/- and Rs.70,000/- respectively and the complaint in hand was filed on 28.03.2023. Though, a clear stipulation was made in the complaint by the respondent-complainant regarding receipt of first sum of Rs.1,20,000/- in the shape of Rs.70,000/- and Rs.50,000/-, on 31.12.2022 and 31.01.2023 respectively with further averment that a note to this effect was made on the backside of the cheque, however, the later deposit of Rs.1,20,000/- been admittedly made by the petitioner in the accounts of respondent-complainant on 27.03.2023 and 28.03.2023 which was much after the cheque was presented for encashment for the last time on 10.03.2023 and also after the issuance of demand notice dated 11.03.2023, that too, without any prior intimation or notice in this regard to the respondent-complainant, the non-mentioning about said deposit in the complaint or even the absence of any endorsement to this effect on the cheque in question cannot be termed as fatal to the complaint filed at the instance of respondent-complainant. Any deposit made by the petitioner

after the demand notice was served upon him and merely a day or two before the filing of complaint and that too, without any prior notice or intimation to the respondent-complainant by the petitioner cannot be made a cause to non-suit the respondent-complainant, at this pre-trial stage while relying upon Section 56 of the NI Act thus, in these circumstances, the exposition of law laid down by the Hon’ble Apex Court in *Dashrathbhai Trikambhai Patel’s* case (supra) cannot be made strictly applicable to the given facts which are clearly distinguishable as in the said case the amount received prior to the presentation of cheque was neither mentioned/explained in the demand notice which was served for cheque amount not even there was any pleading in the complaint about any endorsement on the cheque in this regard.

8. Resultantly, in view of the discussion made herein above, the present petition is dismissed.

29.04.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No