



2024:DHC:1463



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14.02.2024
Pronounced on: 26.02.2024

+ CRL.M.C. 2164/2022 & CRL.M.A. 9155/2022

MAHDOOM BAWA BAHRUDEEN NOORUL

..... Petitioner

Through: Mr.Siddharth Khattar,
Mr.Akash Jain & Mr.Divij
Andley, Advs.

versus

KAVERI PLASTICS

..... Respondent

Through: Ms.Aditi Pancharia, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of Criminal Complaint bearing No. 523804/2016, titled as ***Kaveri Plastics v. Nafto Gaz India Private Limited & Ors.***, registered under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), pending before the Court of the learned Metropolitan Magistrate, NI Act-04, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Metropolitan Magistrate').



2024:DHC:1463



Factual Matrix

2. The above complaint case has been filed by the respondent against the petitioner, arraying the petitioner herein as the accused no.3. In the said complaint, it has been alleged that the accused no.1, that is, Nafto Gaz India Pvt. Ltd., entered into a Memorandum of Understanding with the respondent herein, that is the complainant, on 30.04.2012, pertaining to the sale of land bearing Khasra No.75, Khewat No.61, Khata no.112 and Khatoni No.61/14, Village – Humayun Pur situated at Abadi of Arjun Nagar, New Delhi, and also agreed to take on lease the said property till the final sale deed is executed. It also issued certain cheques towards the liability of the payment of the rent for the leased property.

3. It is stated that Cheque bearing no.876229 dated 12.05.2012 drawn on the Indian Overseas Bank, R.K.Puram, Delhi amounting to Rs.1 crore (Rupees one crore) issued by the accused no.1 was returned dishonoured with the remark '*funds insufficient*'. It is alleged that on the dishonour of the said cheque, the respondent herein sent a legal demand notice on 08.06.2012, on which the accused nos.4 and 5 gave a false and frivolous reply. It is alleged that the accused no.3/petitioner herein avoided service of the demand notice.

4. The accused in the complaint, including the petitioner herein, were summoned by an order dated 04.09.2012 passed by the learned Metropolitan Magistrate.

5. Though not relevant to the present case, the petitioner states that he has also filed a complaint against the respondent and his family members, basis which an FIR has been registered against them.



2024:DHC:1463



6. At the stage of framing of notice, the petitioner along with the co-accused, filed an application seeking discharge, contending that the notice of demand dated 08.06.2012 called upon the accused to pay double the amount of the cheque issued, and therefore, was not in terms of Proviso (b) of Section 138 of the NI Act, and for this reason, the complaint was not maintainable. The said application, however, was dismissed by the learned Metropolitan Magistrate by an order dated 06.10.2021, holding that the same is not maintainable. The petitioner thereafter has filed the present petition.

Submissions by the learned counsel for the petitioner

7. The learned counsel for the petitioner submits that the cheque in question was for an amount of Rs.1 crore, however, by the demand notice dated 08.06.2012, the respondent had demanded from the petitioner pay a sum Rs.2 crores. Placing reliance on the judgments of the Supreme Court in ***Suman Sethi v. Ajay K. Churiwal and Another***, (2000) 2 SCC 380 and in ***Rahul Builders v. Arihant Fertilizers & Chemicals and Another***, (2008) 2 SCC 321, he submits that the complaint is not maintainable as the demand in excess of the cheque amount has been made by the respondent in the Demand Notice.

8. He further submits that the plea of the respondent that there was a typographical error in the legal notice dated 08.06.2012, is not only false but also cannot be accepted to make the complaint maintainable inasmuch as the benefit of this mistake, if any, has to accrue in favour of the accused. As long as the demand is not made for the amount of the cheque, even if it was by way of a clerical mistake, the complaint



2024:DHC:1463



would not be maintainable. In support, he places reliance on the judgments of Andhra Pradesh High Court in *M/s. Yankay Drugs and Pharmaceuticals Ltd. Hyderabad v. M/s Citi Bank* 2001 SCC OnLine AP 381; Punjab and Haryana High Court in *Chhabra Fabrics Private Limited v. Bhagwan Dass, Proprietor of Dhingra., Handicrafts* 2014 SCC OnLine P&H 24809; High Court of Kerala in *Ramaraj v. Rajesh Kumar T.S.*, 2014 SCC OnLine Ker 7009; High Court Madhya Pradesh in *Gokuldas v. Atal Bihar & Anr.*, 2017 SCC OnLine MP 1583; and of the High Court of Karnataka in *K.Gopal v. T. Mukunda*, (judgment dated 29.07.2021 passed in Criminal Appeal No.1011/2010).

9. He submits that the plea of the respondent that there was a clerical mistake in the notice dated 08.06.2012 as more than one notice, including one for an amount of Rs.2 crores, was issued simultaneously by the respondent, is false, as the notice for the dishonour of the cheque of Rs.2 crores was issued only on 14.09.2012, that is, more than three months after the notice in question.

Submissions by the learned counsel for the respondent

10. On the other hand, the learned counsel for the respondent submits that there was a clerical mistake in the legal notice dated 08.06.2012. She submits that as there are more than one cheque issued by the accused no.1, more than one notice was prepared simultaneously on the dishonour of the cheques. By mistake, the amount of Rs.2 crores, which was in relation to another cheque, was mentioned as a demand in the notice dated 08.06.2012 relating to the



cheque of Rs.1 crore, which is the subject matter of the present petition. She submits that the complaint has been pending adjudication since the year 2012, and therefore, should not be quashed. She submits that in spite of notice, the petitioner and the other accused did not raise the above grievance till the stage of framing of notice. She submits that as this is only a clerical error, therefore, the petitioner should not be discharged of the offence.

Analysis and Findings

11. I have considered the submissions made by the learned counsels for the parties.

12. Section 138 of the NI Act reads as under:

“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 provision of this Act, be punished with imprisonment for 4 [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



2024:DHC:1463



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, 5 [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 of other liability” means a legally enforceable debt or other liability.”

13. In ***Suman Sethi*** (Supra), the Supreme Court has held the the notice of demand has to be of the amount of the cheque. If in addition to the amount of the cheque, further demand in form of interest or costs is made, it would depend on the language of the notice whether it is bad in law. Where an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice would fail to meet the legal requirement. The Supreme Court has held 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.”

14. The above view was reiterated by the Supreme Court in **Rahul Builders** (Supra), stating 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



2024:DHC:1463



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 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 30-4-2000. What was, therefore, demanded was the entire sum and not a part of it.”

15. Reference in this regard is also placed on the judgement of this Court in ***M/s Alliance Infrastructure Project Pvt. Ltd. & Ors. v. Vinay Mittal***, 2010 SCC OnLine Del 182, wherein it was held as under:-

“12.The expression “amount of money” used in Section 138(b) of Negotiable Instrument Act, to my mind, in a case of this nature would mean the amount actually payable by the drawer of the cheque to the payee of the cheque. Of course, if the payee of the cheque makes some demands on account of interest, compensation, incidental expenses etc. that would not invalidate the notice so long as the principal amount demanded by the payee of the cheque is correct and is clearly identified in the notice. When the principal amount claimed in the notice of demand is more than the principal amount actually payable to the payee of the cheque and the notice also does not indicate the basis for demanding the excess amount, such a notice cannot be said to be a legal and valid notice envisaged in Section 138(b) of Negotiable Instrument Act. In such a case, it is not open to



2024:DHC:1463



the complainant to take the plea that the drawer of the cheque could have escaped liability by paying the actual amount due from him to the payee of the cheque. In order to make the notice legal and valid, it must necessarily specify the principal amount payable to the payee of the cheque and the principal amount demanded from the drawer of the cheque should not be more than the actual amount payable by him though addition of some other demands in the notice by itself would not render such a notice illegal or invalid.”

16. In view of the Proviso (b) to Section 138 of the NI Act, therefore, the cause of action for filing of the complaint would *inter-alia* accrue to the complainant only where the complainant makes a demand for the payment of the “said amount of money” by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of the information by the complainant from the bank regarding the return of the cheque as unpaid. The Supreme Court has clarified that ‘the said amount’ mentioned in Proviso (b) to Section 138 of the NI Act is the cheque amount. It has further been clarified that if no such demand is made, the notice would fall short of the legal requirement. It has further been clarified that if any additional claims are also made in the notice, unless they are severable in nature, the cause of action for filing of the complaint shall fail. Reference in this regard may also be made to the judgment of the Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr.***, (2023) 1 SCC 578, as well.

17. In the present case, admittedly, the notice of demand dated 08.06.2012 demanded Rs. 2 crores from the accused instead of the



2024:DHC:1463



cheque amount of Rs. 1 crore. It also did not specify the reason for demanding the amount in excess. Therefore, in view of the above referred judgments, the notice was not in compliance with Proviso (b) to Section 138 of the NI Act.

18. As far as the submission of the learned counsel for the respondent that there was a typographical error in the notice, though the learned counsel for the petitioner has disputed the same by asserting that simultaneous to the notice in question there was no other notice issued by the respondent for a cheque relating to an amount of Rs.2 crores, this Court need not enter into this controversy at this stage. Section 138 of the NI Act gives rise to a criminal liability. It must therefore be construed strictly and the condition for invoking the same must be strictly complied with.

19. In **Gokuldas** (supra), the High Court of Madhya Pradesh was, in fact, confronted with the position where the cheque amount was of Rs.4,30,000/-, however, due to a typographical error, the notice demanded only Rs.43,000/-, that is, a lesser amount. In spite of the same, the Court quashed the complaint observing as under:

“20. Merely by saying that the amount so mentioned in the statutory notice was incorrect because of typographical error, in the considered opinion of this Court, the complainant cannot get rid of the notice issued by him under Section 138(b) of Negotiable Instruments Act. The provisions of Section 138 of Negotiable Instruments Act are penal in nature and, therefore, the provisions are to be construed strictly.”

20. Similarly, the Andhra Pradesh High Court in **M/s. Yankay**



Drugs and Pharmaceuticals Ltd. Hyderabad (supra), was confronted with the fact that though the cheque dishonoured by the bank was of Rs.9,972/-, notice demanded only Rs.3,871/-. The discrepancy was again sought to be explained as a typographical error. The said submission of the complainant, however, was rejected by the Court observing as under:

“15. I am unable to agree with this contention. As already noted, giving notice and demanding payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under Section 138 of the Act. If that main ingredient is missing, no offence is made out under Section 138. Furthermore, as already held by this Court in H.L. Agarwal v. Rakesh Agarwal, 1997 (1) ALT (Cr.) 678, the offence under Section 138, of the Act “being a technical offence” all the technical formalities as contemplated under Section 138 of the Act must be complied with.

16. In view of the aforementioned discussion, it should be held that the complaint filed by the 1st respondent-complainant failed to disclose, prima facie, an offence under Section 138 of the Act. The petitioner-accused, therefore, cannot be prosecuted and the criminal proceedings initiated against him have to be quashed.”

21. In ***Chhabra Fabrics Private Limited*** (supra), the High Court of Punjab & Haryana was presented with the fact that there was a discrepancy in the number of the cheque which had been dishonoured. The same was again sought to be explained by alleging a typographical error. The Court, however, rejected the said submission of the complainant, by observing as under:

“7. Undisputedly, both the parties had



business dealings with each other with regard to handlooms. It has come on record that the accused had issued cheque No.476844 as security cheque to the complainant which he presented for encashment by filling an amount of Rs.2,00,000/- as part payment towards Bill No.248 dated 25/09/1995 for Rs.3,26,565.51/- but the same was dishonoured on account of non-arrangement of funds by the drawee bank. However surprisingly, complainant served a legal notice to the accused qua cheque No.47844 dated 26/09/1995 which apparently was not for the cheque in dispute. It may be true, that there was a typographical error in the said legal notice while typing out the cheque number but such typographical error if any, does not meet the compliance of the mandatory provisions of Section 138 of the Negotiable Instruments Act and the only course left for the complainant was to give a fresh legal notice to the accused which admittedly has not been done in the present case and hence it is safe to conclude that for want of statutory compliance of the mandatory provisions of Section 138 of the Act, the present complaint is not maintainable. The Trial Court appreciated the said aspect of the case and rightly came to an irresistible conclusion that the complainant has miserably failed to establish the accusations against the accused and thus accordingly while dismissing the complaint filed by him, acquitted the accused.”

22. The High Court of Kerala, in **Ramaraj** (supra), again emphasised the requirement of the notice to claim amount of the cheque alone, by observing as under:

“10. In a valid prosecution u/s.138 of the Negotiable Instruments Act, I am of the view that service of notice is imperative for maintaining a complaint. The parliament while enacting Section 138 imposed a condition that, making a demand for payment of the cheque



2024:DHC:1463



amount by giving a notice in writing is an essential one. Such notice has to be issued within the statutory period. The conditional precedent is to make a demand of the amount of cheque. A notice demanding huge amount than the dishonoured cheque amount would not serve the requirement. In Annexure-III a sum of Rs.80 lakhs was mentioned as due amount but actually borrowed amount is Rs.8 lakh only. Therefore, no demand was made by the 1st respondent as per Section 138(b) of N.I.Act. Unless a notice is given in agreement with 138(b) of the N.I.Act, a complaint would not be maintainable. In the present case, no demand was made for the payment of cheque amount. If trial is proceeded with Annexure-III notice, it amounts to an abuse of the process of Court.”

23. The Karnataka High Court, in **K.Gopal** (supra), was again confronted with the situation where though the cheques that were dishonoured were for an amount of Rs.2,00,000/- each, legal notice demanded Rs.10,00,000/-. The same was again sought to be explained by the complainant therein as a typographical error. However, the Court held that the notice was defective, entitling the accused therein to be acquitted of the offence under Section 138 of the NI Act.

24. From the above, it would be apparent that the plea of the respondent of there being a typographical error in the notice, even if accepted on facts, cannot be accepted in law to give rise to a cause of action to the respondent to maintain the complaint under Section 138 of the NI Act. The notice being defective, the cause of action for filing of the complaint under Section 138 of the NI Act did not accrue in favour of the respondent.

25. The plea of the respondent that since the complaint has been



2024:DHC:1463



pending for long, this Court should not exercise its power under Section 482 of Cr. P.C. to quash the complaint, also cannot be accepted. The petitioner cannot be made to suffer the agony of defending a complaint, which on the face of it is not maintainable.

26. In view of the above, the complaint case filed by the respondent, that is, Criminal Complaint bearing No. 523804/2016, titled as *Kaveri Plastics v. Nafto Gaz India Private Limited & Ors.*, registered under Sections 138/141/142 of the NI Act as against the petitioner herein is hereby quashed.

27. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 26, 2024
RN/RP

Click here to check corrigendum, if any