



2024:DHC:2796



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 05.04.2024***+ **CRL.M.C. 3002/2022 & CRL.M.A. 12633/2022**

SH HONEY VERMA Petitioner

Through: Mr.Deepak Kohli, Adv.

versus

PIYUSH NAUTIYAL Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for quashing of complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act') in Complaint Case No.437/2019 titled ***Piyush Nautiyal v. Honey Verma***, on the ground that the legal notice dated 06.01.2019 issued by the respondent prior to the filing of the complaint is not in terms of the proviso appended to Section 138 of the NI Act.

2. The Complaint has been filed by the respondent/complainant that a cheque bearing No. 684791, dated 02.12.2018 for Rs.2,00,000/- was drawn on the Punjab National Bank, which was returned unpaid. Thereafter, the respondent/complainant issued a legal notice dated



06.01.2019, as provided under Section 138(b) of the NI Act. As the petitioner did not pay the amount, the respondent filed the complaint under Section 138 of the NI Act. Summons were issued to the petitioner on the Complaint vide order dated 01.02.2019.

3. In spite of service of notice of this petition, none is appearing for the respondent.

4. The learned counsel for the petitioner submits that while the cheque was for a sum of Rs.2 lacs, in the legal notice dated 06.01.2019, the respondent has called upon the petitioner to pay a sum of Rs.1,90,000/- without explaining why an amount different from the purported cheque amount is being demanded. Placing reliance on the judgments of the Supreme Court in **Suman Sethi v. Ajay K. Churiwal and Another**, (2000) 2 SCC 380; **K.R.Indira v. Dr.G. Adinarayan**, (2003) 8 SCC 300; and, **Rahul Builders v. Arihant Fertilizers & Chemicals and Another**, (2008) 2 SCC 321, he submits that for the maintainability of the complaint under Section 138 of the NI Act, the notice must demand the cheque amount alone.

5. I have considered the submission made by the learned counsel for the petitioner.

6. 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 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, 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.”

7. Interpreting Proviso (b) to Section 138 of the NI Act, the Supreme Court in the above referred judgments has held that the notice must demand only the cheque amount.

8. In ***Rahul Builders*** (Supra), the Supreme Court opined 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. 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."

(Emphasis supplied)

9. In fact, in ***Mahdoom Bawa Bahrudeen Noorul v. Kaveri Plastics***, 2024 SCC OnLine Del 1302, it has been held that even a



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typographical error in the notice would accrue in favour of the accused.

10. In the present case, as the legal notice demanded an amount different from the cheque amount, and there was no explanation for the difference in the amount claimed in the notice, the same cannot be considered as a compliance of Proviso (b) to Section 138 of the NI Act, and consequently, the Impugned complaint under Section 138 of the NI Act is not maintainable.

11. The Complaint is accordingly quashed.

12. The petition is allowed. The pending application also stand disposed of as infructuous.

NAVIN CHAWLA, J

APRIL 5, 2024/ns/RP

Click here to check corrigendum, if any