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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 12.02.2024***+ **CRL.M.C. 3357/2022 & CRL.M.A. 14102/2022**

SAMEER SINGH Petitioner
Through: Ms.Pranjal Shekhar &
Mr.Aditya Singh, Advs.

Versus

STATE ANR.Respondents
Through: Mr.Shoaib Haider, APP.
None for R-2.

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.') seeking quashing of the order dated 10.12.2019 passed by the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Court, Delhi in CC No. 13125/2019, titled ***Mohd. Sameer Devli v. Sameer Singh.***

2. The said complaint has been filed by respondent no.2 *inter alia* complaining that cheque no. 380084 dated 16.09.2019 drawn on State Bank of India, 3rd Floor, P.B.B., Vipul Khand, Gomti Nagar, Lucknow, Uttar Pradesh-226010 Branch by the petitioner for a sum of Rs.1,10,000/- has been returned unpaid for the reason, '*fund insufficient*'. The respondent no.2 had



thereafter issued a legal notice of demand on 22.10.2019, however, the petitioner had not made the payment.

3. The learned counsel for the petitioner submits that the above complaint is not maintainable inasmuch as, in the notice dated 22.10.2019, respondent no.2 had made a demand of Rs.1,82,850/- against the cheque amount of Rs.1,10,000/- without specifying the reason for demanding the excess amount. Placing reliance on the judgments of the Supreme Court in *Suman Sethi v. Ajay K. Churiwal and Another*, (2000) 2 SCC 380 and *Rahul Builders v. Arihant Fertilizers & Chemicals and Another*, (2008) 2 SCC 321, he submits that though an excess amount can be demanded in the demand notice, however, it must clearly give the break-up of the claim by stating the cheque amount and the additional amount that it seeks for the reasons that are severable. In absence thereof, the notice would not be treated as a valid notice under Proviso (b) of Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act').

4. In spite of service of notice, none is appearing for respondent no.2.

5. In the present case, the demand notice dated 22.10.2019 issued by the respondent no.2 mentions that the cheque in question was for a sum of Rs.1,10,000/-. Without giving any further reason or justification for the same, the notice demands from the petitioner a sum of Rs.1,82,850/-. The relevant extract from the notice is as under:-



“In the circumstances hereinabove narrated, I call upon you to make the payment of Rupees One Lac Eighty-Two Thousand Eight Hundred fifty (Rs. 1,82,850/- to my client within 15 days from the receipt of this notice, failing which my client shall be compelled to take appropriate legal action against you in the competent courts of law at your risks, costs and consequences thereof You are also liable to pay Rs.11000/- as the cost of this notice. Copy retained in my office for reference, and further action, if required.”

6. In **Suman Sethi** (Supra), 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.”

7. The above view was followed by the Supreme Court in **Rahul Builders** (Supra), holding 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."

8. In the present case also, the demand notice in a vague manner demanded a sum of Rs.1,82,850/- against the cheque



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amount of Rs. 1,10,000/- without specifying the reasons for demanding the enhanced amount. In view of the above precedents, the notice issued by the respondent no.2 to the petitioner which formed part of the cause of action for filing the complaint by the respondent no.2 against the petitioner, is not in conformity with Proviso (b) to Section 138 of the NI Act and therefore, cannot constitute the cause of action for filing of the complaint.

9. Accordingly, the CC No. 13125/2019, titled ***Mohd. Sameer Devli v. Sameer Singh***, pending before the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Court, Delhi and the order dated 10.12.2019 summoning the petitioner accused therein, is quashed.

10. The petition is allowed in the above terms. The pending application is also disposed of.

11. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 12, 2024/rv/RP

[Click here to check corrigendum, if any](#)