

2025:PHHC:045756



135.

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

CRM-M-17988-2025

Date of decision: 02.04.2025

Kanahiya Gupta

.... Petitioner

Versus

Lal Bahadur Singh

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Jain, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. Prayer in this petition filed under Section 528 of BNSS is for quashing of criminal complaint No.NACT 1618/2019, titled as *Lal Bahadur Singh Versus Kanahiya Gupta* under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short the NI Act); and for quashing the summoning order dated 01.03.2019 (Annexure P-2), whereby the petitioner has been summoned to face trial under Sections 138 and 141 of the Negotiable Instruments Act, 1881; along with its subsequent proceedings.

2. Learned counsel for the petitioner contends that the learned Trial Court, vide impugned order, annexed as Annexure P-2, has erroneously summoned the petitioner despite the absence of the essential ingredients of an offence under Section 138 of the Negotiable Instruments Act (for short, the NI Act). Drawing the attention of this Court to the legal

notice, annexed as Annexure P-3, learned counsel submits that the said notice is legally defective as it fails to meet the mandatory statutory requirements under Section 138 (b) of the NI Act. Specifically, it is argued that the notice does not make a clear and unequivocal demand for the cheque amount, which is a *sine qua non* for the initiation of proceedings under Section 138 of the NI Act.

3. Further, learned counsel submits that the notice dated 22.12.2018 (Annexure P-3) issued by the respondent/complainant, demands not only the dishonoured cheque amount of Rs.3 lakhs, but also an additional sum of Rs.22,000/- towards the cost of the notice. It is contended that such a composite or omnibus demand, which includes an amount beyond the cheque value, is contrary to law and renders the notice legally invalid. In support of this submission, reliance has been placed on the judgement of Hon'ble Supreme Court in ***Upasana Mishra Versus Trek Technology India Pvt. Ltd., 2023 Law Suit (SC) 1229: 2023 Live Law (SC) 1075***, wherein it has been held that any demand exceeding the cheque amount vitiates the legal notice and nullifies the proceedings under Section 138 of the NI Act.

4. It is further argued that the learned Trial Court, vide summoning order dated 01.03.2019 (Annexure P-2) proceeded against the petitioner without appreciating the legal defect in the notice. Since the legal notice is invalid, the very foundation of the complaint collapses, thereby rendering the summoning order legally unsustainable.

5. Having considered the submissions of the learned counsel and perused the relevant material on record, this Court finds it appropriate to examine the settled legal position on the issue.

6. The Hon'ble Supreme Court in ***Suman Sethi Versus Ajay K. Churiwal and another, AIR 2000 Supreme Court 828*** has laid down the legal test for determining the validity of a demand notice under Section 138 of the NI Act in the following terms:-

“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.”

7. A similar principle has been reiterated in ***Upasana Mishra (supra)***, as under:-

“6. a demand in addition to the cheque amount in a demand notice by itself would not make it invalid. In other words, as held therein, in the demand notice, demand has to be made for the 'cheque amount' and therefore, notice sans such demand would fall short of legal requirement. At the same time, we will reiterate the position that if in a notice while giving the break up of the claim the cheque amount interest, damages, etc. are separately specified and these additional claims would be severable, such demand would not invalidate the notice.”

8. From the above pronouncements, it is evident that a notice is legally valid as long as it specifies the cheque amount separately and any additional claim, such as interest or costs, is severable.

9. It would be apposite to reproduce the relevant contents of the legal notice (Annexure P-3):-

“4. That the above said two Cheques were deposited with his bank (Union Bank of India, Sector-28, Faridabad) by my client for payment on 05.12.2018, however, it is regretted that the said Cheques were returned unpaid by your banker (HDFC Bank Jasna Road, Bhopani More, Village Bhopani, Faridabad) on 06.12.2018 on account of insufficiency of funds in your bank account as per the return memo issued by my client's bank (Union Bank of India, Sector-28, Faridabad). The return memos were delivered to my client on 15-12-2018.

5. That by this notice my client offers you another opportunity to pay the cheque amount within 15 (fifteen) days of receipt of the notice to avoid complaint u/s 138 of Negotiable Instruments Act, 1881.

Under the above facts and circumstances, I hereby call upon you to make the payment of Rs.3,00,000/- (Rupees Three Lacs Only) within a period of 15 days from the date of receipt of this Notice, failing which, my client shall be constrained to initiate proceedings u/s 138 of Negotiable Instruments Act, 1881 against you at your risk, costs and expenses.

Further, you are also called upon to pay Rs.22,000/- (Rupees Twenty Two Thousand Only) as cost of this Notice.

*Sd/-Som Dutta Sharma
Advocate”*

10. Turning to the facts of the present case, a perusal of the legal notice (Annexure P-3) demonstrates that it explicitly demands the cheque amount of Rs.3 lakhs and separately specifies an additional amount of Rs.22,000/- as cost of the notice. Since the additional demand is severable

and does not obscure the primary claim for the cheque amount, the notice cannot be said to be omnibus in nature.

11. Accordingly, the reliance placed by the learned counsel for the petitioner on ***Upasana Mishra (supra)*** is misplaced. The legal notice in the present case fully satisfies the statutory requirements of Section 138(b) of the NI Act as well as the test lay down by the Hon’ble Supreme Court in ***Suman Sethi*** (supra).

12. Consequently, the argument that the notice is invalid, is devoid of merit. The present petition stands dismissed accordingly.

13. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

April 02, 2025
sanjeev

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