

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

CRM-M-36925-2025 (O & M)

Date of decision: 31.07.2025

A.H. FASHION KARMA PVT. LTD. AND ANOTHER
...PETITIONERS
V/S

STATE OF PUNJAB AND OTHERS
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chaitanya Rohilla, Advocate for the petitioners.

Mr. Subhash Godara, Addl. A.G. Punjab.

Mr. A.K. Gupta, Advocate for respondent No.3.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking quashing of complaint dated 03.08.2021 filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter 'NI Act') bearing COMA No.11698 of 2021 titled as '*M/s Cotton and Blends Inc. vs. M/s A.H. Fashion Karma Pvt. Ltd. and Anr.*' (Annexure P-1), pending before learned Judicial Magistrate Ist Class, Ludhiana and all the subsequent proceedings arising therefrom.

2. Briefly, the facts, as alleged, are that respondent No.3 is in the business of manufacturing hosiery products. The petitioners approached respondent No.3 and requested it to supply t-shirts on credit basis of 45 days from the date of sale. The said material was supplied and six invoices were generated qua it, totaling to a sum of Rs.93,15,401/-. On 14.06.2021, the petitioners paid Rs.12,36,000/- and thus, Rs.80,79,286/- remained due. In



order to discharge the said legal liability, the petitioners issued six cheques. The present complaint pertains to cheque bearing No.000476 dated 08.06.2021 of Rs.6,18,912/- drawn on Kotak Mahindra Bank, Jmd Regent Square, Mehrauli, Gurgaon, issued in favour of respondent No.3. However, on presentation for encashment, the said cheque was dishonoured with the remarks- 'Funds Insufficient' vide return memo dated 11.06.2021. Thereafter, a legal notice dated 02.07.2021 was served upon the petitioners. Since the petitioners failed to make the requisite payment within the stipulated time, complaint(supra) was filed.

3. Learned counsel for the petitioners *inter alia* contends that the legal notice dated 02.07.2021 does not mention the part payment of Rs.12,36,000/- made by the petitioners via RTGS on 14.06.2021, which is also reflected in the ledger account maintained by respondent No.3. He further contends that it is trite law that the legal notice must be specific and the demand made therein cannot be omnibus in nature. As such, since the legal notice does not adjust for the part payment already made, the same is rendered defective which further vitiates the filing of complaint (supra) and all consequential proceedings arising therefrom. Furthermore, the said dispute led to filing of six separate criminal complaints under Section 138 of the NI Act. The petitioners have challenged three of these six complaints by means of petition bearing No.- **CRM-M-36900- 2025** titled as '**A.H. Fashion Karma Pvt. Ltd. And another vs. State of Punjab and others**' wherein, vide order dated 22.07.2025, a Co-ordinate bench of this Court stayed the proceedings before the learned trial Court. The said order is reproduced below:

"This petition has been filed for quashing of criminal complaint bearing No.COMA/11696/2021 titled as "M/s Cotton and Blends Inc.



Vs.M/s A.H. Fashion Karma Pvt. Ltd. & another' as pending before the learned Judicial Magistrate 1st Class, Ludhiana along with all consequential proceedings arising therefrom, whereby the petitioners had been ordered to be summoned as accused for commission of offences punishable under Section 138 of the Negotiable Instruments Act by learned trial Court.

It is inter alia submitted by learned counsel for the petitioners that the impugned complaint and summoning orders are not sustainable in the eyes of law as there is fundamental flaw in the complaint itself. Respondent No.3 failed to disclose the factum of making part payment of Rs.17,16,346/- by the petitioners. There was no legally enforceable liability on the part of the petitioners to discharge at the time of lodging of the complaint. The amount in question is not legally recoverable. The mandatory requirement of proviso to Section 138(B) of the Negotiable Instruments Act has been violated. It is, therefore, urged that the present petition deserves to be allowed.

At this stage, learned counsel for the petitioners submits that as no relief has been claimed against respondents No.1 and 2, their names be deleted from the array of parties. Amended memo of parties be filed.

At this stage, Ms. Damini Aggarwal, Advocate has put in appearance through video conferencing on behalf of respondent No.3 and seeks time for filing reply and addressing arguments.

Adjourned to 04.11.2025.

Proceedings before the trial Court shall be kept at abeyance till the next date of hearing.”

4. Further still, to support his contentions, learned counsel places reliance upon the judgments rendered by the Hon'ble Supreme Court in '**Dashrathbhai Trikambhai Patel vs. Hitesh Mahenderabhai Patel and others**', 2023(1) RCR (Criminal) 408 and '**Upasana Mishra vs. Trek Technology India Pvt. Ltd.**', 2024(1) ACR 100 as well as the Delhi High Court in '**Alliance Infrastructure Project Pvt. Ltd. and others vs. Vinay**



Mittal, 2010 (2), RCR, (Criminal) 525 and '*Mahdoom Bawa Bahrudeen Noorul vs. Kaveri Plastics*', Citation No.2024:DHC:1463.

5. *Per contra*, learned counsel for respondent No.3 submits that in one of the connected matters i.e. the petition bearing No.**CRM-M-36903-2025** filed by the petitioners has already been dismissed by a Co-ordinate Bench of this Court vide order dated 17.07.2025, which is a persuasive precedent in favour of respondent No.3. Lastly, disputed questions of facts are required to be assessed by the learned trial Court on the basis of evidence adduced. As such, interference by this Court is not warranted.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that a Co-ordinate Bench of this Court has already dismissed a petition bearing No.**CRM-M No.36903-2025** filed by the petitioners on identical grounds, on merits.

6. It is trite law that serving a demand notice is a *sine qua non* for instituting a complaint under Section 138 of the NI Act. The intention behind the said requirement is to give the accused an opportunity to settle the debt before criminal proceedings are initiated against him. As such, it becomes all the more important to ensure that such a notice contains all necessary details pertain to the cause of action, in unmistakeable terms. While Section 138(b) NI Act does not specify the ingredients of a valid notice, it is essential for a legal demand notice to clearly indicate the existence and extent of the liability. At this juncture, it would be profitable to cite the judgment rendered by a two Judge bench of the Hon'ble Supreme Court in **Rahul Builders vs. Arihant Fertilizers and Chemicals and others (2008) 2 SCC 321**, wherein speaking through Justice S.B. Sinha, the following was opined:



*“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. The 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 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 No. 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 30.04.2000. What was, therefore, demanded was the entire sum and not a part of it.*

11. Mr. Jain relied upon a decision of this Court in Suman Sethi v. Ajay K. Churiwal and Another, 2000(1) RCR (Criminal) 780 : [(2000)2 SCC 380] wherein it was stated:



"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.

9. This Court had occasion to deal with Section 138 of the Act in Central Bank of India v. Saxons Farms 3 and held that the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. Though in the notice demand for compensation, interest, cost etc. is also made the drawer will be absolved from his liability under Section 138 if he makes the payment of the amount covered by the cheque of which he was aware within 15 days from the date of receipt of the notice or before the complaint is filed." [Underlining is ours for emphasis]

As therein, some other sums were indicated in addition to the amount of cheque, it was, therefore, not held to be a case where the dispute might be existing in respect of the entire outstanding amount.

12. On this aspect of the matter, we may consider K.R. Indira v. Dr. G. Adinarayana, 2003(4) RCR (Criminal) 966 : 2004(1) Apex



Criminal 696 : [(2003)8 SCC 300] wherein this Court upon noticing Suman Sethi (supra) stated the law, thus :

"...However, according to the respondent, the notice in question is not separable in that way and that there was no specific demand made for payment of the amount covered by the cheque. We have perused the contents of the notice. Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount, nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which exposes the drawer for being proceeded against under Section 138 of the Act...."

13. As in the instant case, no demand was made for payment of the cheque amount, we are of the opinion that the impugned judgment cannot be faulted."

Adverting to the factual matrix of the case at hand, it appears that a specific demand of Rs.6,18,912/- has been raised in the legal notice, corresponding to the amount mentioned in the dishonoured cheque (supra). As such, there is nothing on the record to substantiate the claim that the said legal

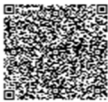


notice was omnibus in nature and failed to provide the complete and specific information necessary to initiate proceedings under Section 138 NI Act.

7. As far as the alleged part payment of Rs.12,36,000/- and relevance thereof is concerned, the same will be ascertained at the time of trial, subject to the evidence adduced by the parties. This Court cannot assume the role of the trial Court and suffocate the proceedings, taking advantage of Section 482 of the Cr.P.C. by appreciating the probable defence of the petitioners at this stage. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determine disputed question of facts as it is only for the trial Court to decide the same, after examining the evidence on record. As such, interference by this Court with regards to factual questions is impermissible in law.

8. Reliance can also be placed on the judgment rendered by a two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“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.”

Furthermore, in *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458*, a two Judge bench of the Hon’ble Supreme Court, speaking through Justice Adarsh Kumar Goel, made the following observations:

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

9. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.
10. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

July 31, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No