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CrI.O.P.No.30940 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.30940 of 2022 and
CrI.MP.Nos.18939 & 18940 of 2022

M/S.TRANS PACIFIC LOGISTICS PRIVATE LIMITED,
REP BY ITS DIRECTOR KUSUMA,
(MANAGING DIRECTOR DHANRAJ DIED)
NO.231(OLD NUMBER 111) 3RD FLOOR, ANGAPPA NAICKEN
STREET, CHENNAI - 1 ... Petitioner

Vs.

M/S.SMART MARINE SERVICES PRIVATE LIMITED
REP BY MR M MANIKANDAN,
NO.3, B-3 GAIETY PALACE NO.1/L,
BLACKERS ROAD,MOUNT ROAD,
CHENNAI - 2 ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. to call for the entire records in connection with the STC No.1760 of 2022 on the file of the Fast Track Court No.IV, Metropolitan Magistrate, George Town Chennai and to quash the same by allowing this petition.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.M.K.Ajith Kumar
for Mr.C.Kasirajan

ORDER

This criminal original petition has been filed praying to quash the proceedings in STC No.1760 of 2022 on the file of the Fast



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Track Court No.IV, Metropolitan Magistrate, George Town Chennai.

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2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act on the allegation that the respondent is engaged in the business of freight forwarding logistics, leasing out containers, providing and rendering various services to traders for their imports and exports from and to various parts in India. In the course of such business, the petitioner approached the respondent during the month of August 2018 representing that they are carrying on business in the name and style of M/s.Trans Pacific Logistics Private Limited and requested to lease out 23 units of 40' HC. Accordingly, they entered into agreement dated 27.08.2018 and the respondent leased out 23 units of 40' HC in favour of the petitioner. As per the agreement, the petitioner ought to have returned the empty units within 60 to 90 days from the date of lease. The lease rent per unit was fixed at Rs.400/- per day plus GST. However, the petitioner neither paid the lease rent nor returned back the containers to the respondent. Therefore, the respondent had issued a letter of cancellation of equipment agreement dated 11.06.2019 and demanded the outstanding lease rent amount Rs.17,90,792/- together with interest at the rate of 24% p.a. On receipt of the said notice, the petitioner also issued reply notice dated



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18.06.2019 and requested time to clear the dues. In part of discharge of the liability, the petitioner had issued a cheque for a sum of Rs.12,00,000/-. It was presented for collection. However, it was returned dishonoured for the reason 'insufficient funds'. After causing statutory notice, the respondent filed complaint and the same was taken cognizance by the trial court.

3. The learned counsel for the petitioner raised ground that after dishonour of the cheque, the respondent caused statutory notice as contemplated under Section 138 of NI Act thereby calling upon the petitioner to pay the due of Rs.17,90,952/- with interest at 24% p.a. But the cheque was issued only for Rs.12,00,000/- and the demand was made excess to the cheque value. It is not permissible in law and as such, the respondent does not have any cause of action to proceed with the complaint against the petitioner. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Kaveri Plastics Vs. Mahdoom Bawa Bahrudeen Noorul*** reported in ***2025 LiveLaw (SC) 927***.

4. Per contra, the learned counsel for the respondent submits that there is absolutely no prejudice caused to the petitioner by

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demanding the entire due in excess of the cheque amount. In the said notice, it was categorically mentioned that the cheque was issued for a sum of Rs.12,00,000/- Therefore, the complaint is very much maintainable and on this technical ground, the entire complaint cannot be quashed.

5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. Admittedly, the petitioner had issued a cheque for a sum of Rs.12,00,000/-. It was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. Therefore, the respondent caused notice as contemplated under Section 138 of NI Act dated 23.10.2019. It is relevant to extract the provision under Section 138 of NI Act hereunder:

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



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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 provisions 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:

7. On perusal of the said notice, it is revealed that the respondent called upon the petitioner to pay the admitted amount of Rs.17,90,952/- with interest at the rate of Rs.24% p.a. as on date within 15 days from the date of receipt of the notice. Therefore, the cheque amount is completely different from the demand made by the respondent as contemplated under Section 138 of NI Act. The object of the notice as contemplated under Section 138(b) of NI Act is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Therefore, the legal notice cannot be different from the cheque amount. Further, the purport of group of words ‘makes a demand for the payment of said amount of money’ occurring in Proviso (b) to Section 138 of NI Act, and in particular the connotation ‘ the said amount of money’ therein hold key.



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8. The Hon'ble Supreme Court of India held in the case of

Kaveri Plastics Vs. Mahdoom Bawa Bahrudeen Noorul reported in

2025 LiveLaw (SC) 927 as follows:

“7. When the Proviso (b) to [Section 138](#) stipulates the service of notice as one of the conditions for constituting the offence, and when the words ‘said amount’ is incorporated in the language of the provision, it is the amount which is specifically referable to the amount recoverable under the cheque in question. Reading [Section 138](#) of the Act in a composite manner, the word ‘said amount’ occurring in the Proviso (b) is connectible with and operates in conjunction with language in the parent part of the Section ‘where any cheque drawn by a personof any amount of money’.

7.1 The words ‘said amount’ and the phrase ‘any amount of money’ have the same purport signifying the cheque amount. They operate hand-in-hand for the purpose of applicability of the Section. The nexus or linkage between the two is enacted by the Legislature with a purpose of making the two to be the same and inseparable components, the former describing the offence and the latter denoting the condition to be fulfilled for constituting the offence.

8. From the afore-stated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under [Section 138](#) of the NI Act. In the event of the main ingredient not being



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satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under [Section 138](#) of the NI Act would fall flat as bad in law. The notice to be issued under Proviso (b) to [Section 138](#) of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1 A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.



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8.2 *The condition of notice under Proviso (b) is required to be complied with meticulously. Even typographical error can be no defence. The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for, the so called mistake occurred and recurred in both the notices dated 08.06.2012 and 14.09.2012.*

9. *When the provision is penal and the offence is technical, there is no escape from holding that the 'said amount' in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the Proviso (b) to [Section 138](#) of the NI Act, it is mandatory that 'said amount' to be mentioned therein is the very amount of cheque, and none other.*

10. *Reverting to recollect the facts of this case, the cheque which was drawn by the respondent was for Rs.1,00,000/- whereas in the notice issued under Proviso*

(b) to [Section 138](#) of the NI Act against the respondent, appellant mentions the amount of Rs.2,00,000/-. The rigours of law on this score being strict, the defence would not hold good that the different amount mentioned in



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the notice was out of inadvertence. Even if the cheque number was mentioned in the notice, since the amount was different, it created an ambiguity and differentiation about the 'said amount'. The notice stood invalid and bad in law. The order of quashment of notice was eminently proper and legal.

9. The above judgment is squarely applicable to the case on hand since it is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment. Admittedly, in the case on hand, the respondent failed to demand the cheque amount and demanded more than the cheque amount. Therefore, notice stood invalid and bad in law. Hence, there is no cause of action for the respondent to lodge complaint.

10. In view of the above discussion, this court is inclined to quash the impugned proceedings. Accordingly the entire proceedings, in STC No.1760 of 2022 on the file of the Fast Track Court No.IV, Metropolitan Magistrate, George Town, Chennai, is quashed and this



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criminal original petition stands allowed. Consequently, connected
miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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