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122 (03 cases)

1. CRM-M-36974-2025 (O&M)

A.H. Fashion Karma Pvt. Ltd. and another

...Petitioners

Versus

M/s Cotton and Blends Inc. through its
Partner Sh. Naresh Kumar Garg

...Respondent

2. CRM-M-36867-2025 (O&M)

A.H. Fashion Karma Pvt. Ltd. and another

...Petitioners

Versus

M/s Cotton and Blends Inc. through its
Partner Sh. Naresh Kumar Garg

...Respondent

3. CRM-M-36900-2025(O&M)

A.H. Fashion Karma Pvt. Ltd. and another

...Petitioners

Versus

M/s Cotton and Blends Inc. through its
Partner Sh. Naresh Kumar Garg

...Respondent

Date of decision: 19.05.2026

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Chaitanya Rohilla, Advocate
for the petitioners. (Through VC)

Mr. Akash Kumar Gupta, Advocate for the respondent.

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**MANISHA BATRA, J. (Oral)**

1. This common order shall dispose of above mentioned three petitions as they are similar in nature.
2. Prayer in these petitions, filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), is for quashing of complaint bearing No. COMA-11695-2021, dated 03.08.2021, complaint bearing No. COMA-11696-2021, dated 03.08.2021 as well as complaint bearing No. COMA-11703-2021, dated 03.08.2021, all three titled as '***M/s Cotton and Blends Inc. M/s A.H. Fashion Karma Pvt. Ltd. and another***', filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 (for short, '*N.I. Act*') along with all the subsequent proceedings having emanated therefrom.
3. Since the facts in all the aforementioned three complaints are identical, the facts are being extracted from the petition bearing number ***CRM-M-36974-2025*** for the sake of convenience and coherence.
4. Brief facts relevant for the purpose are that petitioner No.1 is a private limited company engaged in the business of supplying garments, whereas petitioner No.2, i.e. Atul Sagar, is one of its Directors and authorised signatory. Respondent No.3-complainant is a partnership firm engaged in the business of manufacturing garments at Ludhiana. As per the case set up by the complainant, the petitioners had placed orders for supply of garments, pursuant to which various invoices were raised between April and June, 2021. Against the alleged outstanding liability, six post-dated cheques were stated to have been

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issued by petitioner No.2 on behalf of petitioner No.1 company. One such cheque bearing No.000478 dated 24.06.2021 for an amount of Rs.11,43,188/- drawn on Kotak Mahindra Bank, Gurgaon Branch, forms the subject matter of the present complaint. The said cheque, upon presentation, was dishonoured on 30.06.2021 with the remarks "Funds Insufficient". A legal notice dated 02.07.2021 was served upon the petitioners calling upon them to make the payment of aforementioned amount of money but to no avail, thereby compelling the complainant to file the impugned complaint.

5. After presentation of the complaint and considering the preliminary evidence led by the complainant, the learned trial Court summoned the petitioners to face trial for commission of offence punishable under Section 138 of the N. I. Act. Aggrieved from the same, the petitioner has filed the present petition.

6. It is argued by learned counsel for the petitioners that the very foundation of the impugned complaint is legally unsustainable as the statutory demand notice issued under Section 138(b) of the N. I. Act is defective, omnibus and does not disclose the actual legally enforceable debt. It is contended that though the complainant had admittedly received an amount of Rs.12,36,000/- through RTGS on 14.06.2021, prior to dishonour of the cheque as well as issuance of legal notice, the said payment was deliberately concealed and no adjustment thereof was made while raising the demand under the notice dated 02.07.2021. It is further argued that once part payment had admittedly been received before presentation of the cheque, the complainant could not have

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demanded the full cheque amount without making endorsement or adjustment of the payment already received. It is argued that the cheque amount no longer represented the legally enforceable debt on the date of dishonour and, therefore, the statutory ingredients of Section 138 of the N. I. Act were not satisfied.

7. It is further argued that the complainant itself, in a separate complaint pending at Jalandhar, categorised the transactions into two distinct groups of invoices and cheques, thereby admitting that separate liabilities existed. Despite such admitted categorisation and admitted receipt of part payment, the complainant intentionally issued a misleading and inflated demand notice. In support of his submissions, learned counsel has placed reliance upon *M/s Alliance Infrastructure Project Pvt. Ltd. and others vs. Vinay Mittal*, ILR (2010) III Delhi 459, to contend that a notice demanding the entire cheque amount despite receipt of part payment cannot be treated as a valid notice under Section 138(b) of the Act. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel*, MANU/SC/1294/2022, wherein it was held that where part payment is made after issuance of cheque but before encashment, the cheque no longer represents the legally enforceable debt unless appropriate endorsement under Section 56 of the Negotiable Instruments Act is made. Learned counsel has also relied upon the judgments in *Rohit Jain v. Kevin Power Solutions Ltd. and others*, MANU/PH/2390/2024, *Shree Corporation v. Anilbhai Puranbhai Bansal*, MANU/GJ/0379/2018, *Mahdoom Bawa Bahrudeen Noorul v. Kaveri Plastics*, MANU/DE/1405/2024, *Upasana*

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Mishra v. Trek Technology India Pvt. Ltd., MANU/SC/1460/2023 and *Somisetty Purushotham Kumar v. State of Andhra Pradesh and others*, MANU/AP/1485/2024, to argue that a vague, omnibus or inflated demand notice vitiates the very cause of action under Section 138 of the Act and continuation of criminal proceedings on the basis of such defective notice amounts to abuse of process of law. With these broad submissions, it is, thus, urged that the complaint and all consequential proceedings arising therefrom is liable to be quashed.

8. Reply has been filed by the respondent/complainant. Learned counsel for the respondent, in terms of the reply, has argued that six complaints under Section 138 of the N. I. were filed against the petitioners regarding dishonour of six different cheques issued against separate invoices pertaining to supply of goods. It is argued that the petitioners are trying to delay the proceedings by repeatedly filing petitions on identical grounds. It is further argued that similar discharge applications filed by the petitioners before the learned trial Court were already dismissed vide detailed order dated 21.05.2025 and even two connected quashing petitions filed before this Hon'ble Court were dismissed by coordinate Benches. The Special Leave Petitions preferred against the said orders were also dismissed by the Hon'ble Supreme Court. There was no admitted part payment towards the cheque involved in the present complaint and the amount of Rs.12,36,000/- relied upon by the petitioners pertained to a different set of invoices covered under another complaint pending at Jalandhar. It is argued that the issue regarding appropriation of payment is a disputed

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question of fact which can only be adjudicated during trial after appreciation of evidence and cannot be decided in proceedings under Section 528 BNSS. The petitioners have concealed the fact that petitioner No.2 had been declared proclaimed person in all six complaints and that proceedings under Section 174-A IPC were also initiated against him. The complainant is an MSME unit facing serious financial hardship due to non-payment of huge amounts by the petitioners and the repeated litigation initiated by the petitioners is causing unnecessary delay in the trial. Hence, it is urged that the petition is liable to be dismissed.

9. This Court has heard the rival submissions.

10. The principal argument raised on behalf of the petitioners is that the statutory demand notice issued under Section 138(b) of the N. I. Act is defective on account of non-adjustment of the alleged part payment of Rs.12,36,000/- said to have been made by the petitioners prior to dishonour of the cheque in question and, therefore, the very foundation of the complaint is vitiated. Before advertng to the merits of the aforesaid contention, it would be apposite to notice that the controversy between the parties arises out of a series of commercial transactions involving multiple invoices and issuance of different cheques. The complainant has specifically disputed the plea of the petitioners regarding appropriation of the alleged payment towards the cheque in question and has categorically asserted that the said amount pertained to another set of invoices forming subject matter of a separate complaint.

11. At this stage, this Court cannot enter into a detailed examination

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regarding the manner of appropriation of payments or adjudicate whether the amount allegedly transferred through RTGS was liable to be adjusted against the cheque forming subject matter of the present complaint. Such determination would necessarily depend upon appreciation of documentary evidence, ledger accounts and the respective stand of the parties during trial. It is well settled that while exercising jurisdiction under Section 528 BNSS, the High Court is not expected to conduct a mini trial or adjudicate disputed questions of fact. The Hon'ble Supreme Court in ***HMT Watches Limited v. M.A. Abida, (2015) 11 SCC 776*** has held that disputed factual issues cannot be decided while exercising inherent powers for quashing of proceedings. Similarly, in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458***, it was observed that while dealing with a petition seeking quashing of complaint under Section 138 of the N. I. Act, the Court has ordinarily to proceed on the basis of averments made in the complaint and the defence sought to be raised by the accused cannot be examined at that stage. Reliance can also be placed upon ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi), 2022 SCC OnLine SC 513***, wherein Hon'ble Supreme Court has cautioned that quashing of proceedings at the preliminary stage deprives the trial Court of the opportunity to evaluate the evidence brought on record and may result in granting an undue advantage to the accused. It was observed that where issuance of cheque and signatures are not disputed, the balance of convenience ordinarily lies in favour of permitting the prosecution to proceed.

12. Much emphasis has been laid by learned counsel for the petitioners

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upon the alleged defect in the statutory notice. There can be no quarrel with the proposition that service of a valid demand notice is a *sine qua non* for maintaining a complaint under Section 138 of the N. I. Act. The Hon'ble Supreme Court in ***Rahul Builders v. Arihant Fertilizers and Chemicals and another, (2008) 2 SCC 321*** observed that an omnibus notice without specifying the amount payable under the dishonoured cheque may fail to satisfy the mandatory requirement of Section 138(b) of the N. I. Act. However, in the present case, a perusal of the legal notice reveals that a specific demand corresponding to the amount mentioned in the dishonoured cheque had been raised by the complainant. Therefore, at this stage, it cannot be prima facie concluded that the notice was vague or omnibus in nature so as to vitiate the entire proceedings. The question whether the alleged payment was liable to be adjusted against the cheque amount is itself a disputed issue which remains to be established before the learned trial Court. There is no dispute with regard to the ratio of law laid down in the authorities cited by learned counsel for the petitioners. However, the same are not applied to the case in hand keeping in view the peculiar facts and circumstances.

13. It is also significant that similar petitions arising out of connected complaints between the same parties had already been dismissed by Coordinate Benches of this Court. The challenge carried thereagainst before the Hon'ble Supreme Court also did not culminate into any interference. Though each case is required to be considered on its own merits, the aforesaid circumstance nevertheless supports the contention that the issues sought to be raised by the

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petitioners are matters requiring adjudication on evidence during trial.

14. In view of the discussion made hereinabove, this Court is of the considered opinion that no ground is made out for exercise of inherent jurisdiction under Section 528 BNSS for quashing of the impugned complaint. Hence, the petition is ***dismissed***. Since the controversy involved in the remaining two petitions also arises out of the same set of transactions between the parties and the grounds raised therein are identical in nature, the only distinction being the amount of the dishonoured cheques involved, this Court does not find any reason to take a different view. Consequently, for the reasons recorded hereinabove, the said petitions are also ***dismissed***.

15. However, nothing observed hereinabove shall be construed as an expression of opinion on the merits of the cases and the learned trial Court shall proceed independently and strictly in accordance with law.

16. Let a photocopy of this order be placed on the files of the connected cases.

19.05.2026

Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No