

2026:PHHC:048697



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

SR. NO.121

**CRM-M-48345-2019 (O&M)
DATE OF DECISION:10.03.2026**

SHREE BALAJI PIGMENT PVT LTD AND OTHERS

...PETITIONER(S)

VERSUS

M/S PRESTIGE IMPEX

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Amit Dhawan, Advocate
for the petitioners.

Mr. Rakesh Bhatia, Advocate
for the respondent.

N.S. SHEKHAWAT, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. to quash Complaint No. 4523 of 2019 titled as 'M/s Prestige Impex Vs. Shree Balaji Pigment Pvt. Ltd and others' (Annexure P-3) under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act'), which is pending before the Court of Judicial Magistrate First Class, Jalandhar and summoning order dated 23.09.2019 (Annexure P-4) passed by trial court and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners submits that the petitioner No. 1 is a private limited company, whereas petitioners no. 2 and 3 are

Directors of the petitioner No. 1 company. Petitioner No. 1 is involved in the business of manufacture, sale, import and export of all types of pigments, colours, paints and is having its registered office at Katua (J&K). Petitioner No. 1 was having business dealings with the respondent/complainant and the petitioners through their authorised signatory Lalit Agarwal had issued a post-dated cheque No.158241 dated 26.05.2019 for a sum of Rs.7,19,543/- in order to clear the past liability of the respondent/complainant. However, subsequently, the amount equal to the amount mentioned in the said cheque, i.e. Rs.7,19,543/- was directly transferred to Account Number 0109010100002902 of the respondent/complainant firm maintained with J&K Bank, Jalandhar City in two installments, i.e. Rs.2,19,593/- on 24.5.2010 and Rs.5,00,000/- on 27.05.2019. Thus, the total liability of Rs.7,19,543 towards the impugned cheque No.158241 was paid by the petitioners to the respondent and no liability was outstanding. Even a fresh transaction vide bill No.PKT/19-20/4 dated 29.05.2019 was entered between the petitioners and the respondent and the net worth of the said transaction was Rs. 6,48,152/-. Even the petitioners had never issued a cheque equal to the amount of Rs.6,48,152/- to the respondent/complainant, still, the respondent maliciously retained impugned cheque for an amount of ₹7,19,543 and by misusing the same, it was presented before the banker of petitioner No. 1. Ultimately, the petitioner received a statutory legal notice (Annexure P-1) from the respondent and it was conveyed that the petitioners should pay an amount of Rs.6,48,152/-, being the balance outstanding amount due against the cheque. The petitioners duly replied to the legal notice on 03.9.2019 (Annexure P-2) through their counsel and requested the respondent to withdraw the complaint. However, on 18.09.2019, the

respondent filed a complaint under Section 138 of the NI Act against the petitioners in the Court of JMIC Jalandhar. Vide order dated 23.9.2019, the trial court summoned the petitioners to face trial under Section 138 of the NI Act (Annexure P-4).

3. Learned counsel further submitted that in the present case, the respondent had filed a criminal complaint for the dishonour of Cheque No. 158241 dated 26.05.2019 for an amount of Rs.7,19,543/-. It was alleged that the cheque was presented before the bank for encashment, however, the same was returned unpaid. In fact, the entire liability of the said cheque had already been paid by the petitioners in the account of the respondent, which maintained with J&K Bank in two parts i.e. Rs 2,19,543/- and Rs.5,00,000/- . Thus, the total liability of Rs. 7,19,543/- towards cheque no. 15841 dated 26.05.2019 was paid by the petitioners to the respondent. Learned counsel further submitted that in fact, the total amount of money mentioned in the head note was less than the cheque amount. Consequently, the complaint in the present case was liable to be dismissed. He also submitted that the outstanding amount was admittedly less than the amount filled in the cheque. In such circumstances, the only remedy with the petitioner was to obtain a new cheque or could have got an endorsement on the cheque. However, the most significant aspect, which had emerged is that the admitted/proved liability is much less than the amount stated in the cheque. Thus, learned counsel submitted that the disputed cheque cannot be held to be drawn in discharge of the liability of the respondent.

4. Learned counsel for the respondent vehemently argued that since more than five years have been passed, the petitioners had failed to

clear the outstanding amount, rather filing the present petition by concealing the facts and thus, the present petition is liable to be dismissed.

5. I have heard the learned counsel for the parties and perused the case file minutely.

6. Hon'ble the Supreme Court in **M/s. Alliance Infrastructure Project Pvt. Ltd. v. Vinay Mittal 2010(2) RCR(Criminal) 525** has held as under:-

“8. The question which comes up for consideration is as to what the expression "amount of money" means in a case where the admitted liability of the drawer of the cheque gets reduced, on account of part payment made by him, after issuing but before presentation of cheque in question. No doubt, the expression "amount of money" would mean the amount of the cheque alone in case the amount payable by the drawer, on the date of presentation of the cheque, is more than the amount of the cheque. But, can it be said the expression "amount of money" would always mean the amount of the cheque, even if the actual liability of the drawer of the cheque has got reduced on account of some payment made by him towards discharge of the debt or liability in consideration of which cheque in question was issued. If it is held that the expression "amount of money" would necessarily mean the amount of cheque in every case, the drawer of the cheque would be required to make arrangement for more than the admitted amount payable by him to the payee of the cheque. In case he is not able to make arrangement for the whole of the amount of the cheque, he would be guilty of the offence punishable under Section 138 of Negotiable Instruments Act. Obviously this could not have been the intention of the legislature to make a person liable to punishment even if he has made arrangements necessary for payment of the amount which is actually payable by him. If the drawer of the cheque is made to pay more than the amount

actually payable by him, the inevitable result would be that he will have to chase the payee of the cheque to recover the excess amount paid by him. Therefore, I find it difficult to take the view that even if the admitted liability of the drawer of the cheque has got reduced, on account of certain payments made after issue of cheque, the payee would nevertheless be entitled to present the cheque for the whole of the amount, to the banker of the drawer, for encashment and in case such a cheque is dishonoured for wants of funds, he will be guilty of offence punishable under Section 138 of Negotiable Instruments Act.

9. *I am conscious of the implication that the drawer of a cheque may make payment of a part of the amount of the cheque only with a view to circumvent and get out of his liability under Section 138 of Negotiable Instruments Act. But, this can easily be avoided, by payee of the cheque, either by taking the cheque of the reduced amount from the drawer or by making an endorsement on the cheque acknowledging the part payment received by him and then presenting the cheque for encashment of only the balance amount due and payable to him. In fact, Section 56 of Negotiable Instruments Act specifically provides for an endorsement on a Negotiable Instrument, in case of part-payment and the instrument can thereafter be negotiated for the balance amount. It would, therefore, be open to the payee of the cheque to present the cheque for payment of only that much amount which is due to him after giving credit for the part-payment made after issuance of cheque. The view being taken by me was also taken by a Division Bench of Kerala High Court in **Joseph Sartho v. Gopinathan Nair, 2009(1) RCR (Criminal) 625 : 2009(1) RCR (Civil) 608 : 2009 (2) Crimes 463 (Kerala)**. As noted by the Hon'ble Supreme Court in **Rahul Builders v. Arihant Fertilizers & Chemicals And Another, 2007(4) RCR (Criminal) 973 : 2007(6) R.A.J. 223 : (2008) 2 SCC 321**, Negotiable Instruments Act envisages application of the penal*

provisions which needs to be construed strictly. Therefore, even if two views in the matter are possible, the Court should lean in favour of the view which is beneficial to the accused. This is more so, when such a view will also advance the legislative intent, behind enactment of this criminal liability.

7. In ***Central Bank of India & Another v. Saxons Farms & Others, 1999(4) RCR (Criminal) 324:1999(8) SCC 221***, the Hon'ble Supreme Court observed that the object of the notice under Section 138(b) of Negotiable Instruments Act is to give a chance to the drawer of the cheque to rectify his omission and also to protect the honest drawer. If the drawer of the cheque is asked to pay more than the principal amount due from him and that amount is demanded as the principal sum payable by him, it is not possible for an honest drawer of the cheque to meet such a requirement.

8. In ***Suman Sethi v. Ajay K. Churiwala, 2000(1) RCR (Criminal) 780 : 2000(2) SCC 380***, the Hon'ble Supreme Court held that where the notice also contains a claim by way of cost, interest etc. and gives breakup of the claim of the cheque amount, interest, damages etc., which are separately specified, the claim for interest, cost etc. would be superfluous and these additional claims being severable would not invalidate the notice. It was further held that if an ominous demand is made in a notice as to what was due against a dishonoured cheque, the notice might fail to meet the legal requirement and may be regarded as bad. The same consequence, in my view, would follow where the principal sum demanded in the notice is more than the actual amount payable to the payee of the cheque as principal sum.

In the present case, while demanding Rs. 49,47,600/- vide notice dated 19.12.2008, the complainant did not even indicate that the actual amount due

to him was only Rs. 32,97,600/- and he called upon the complainant to pay the whole of the amount of the cheque without even trying to justify the demand made by him.

9. Still further, in the present case, reliance can also be placed on the judgment passed by the Hon'ble Delhi High Court in the matter of **Susan Electricals India Private Limited v. Grandlay Electricals India, (Delhi)2024(4) BC 147 : 2024(313) DLT 104**, wherein court observed that:

*“10. The issue involved in the present Petition is no longer res integra and is covered in the Judgment of the Apex Court in **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578**, wherein the Apex Court has observed as under:*

"30. The appellant contends that the purpose of Section 138 of the Act would be defeated if the dishonour of the cheque issued for security is not included within the purview of Section 138 where the payment of a part of the cheque amount is made. It was contended that it would lead to a possibility where the drawer of the cheque could evade prosecution under Section 138 by paying a small amount of the debt while defaulting on the remaining payment. Section 56 stipulates that if there is an endorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 56 reads as follows:

"56. Indorsement for part of sum due.-No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid,

a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."

31. Section 15 defines the phrase "indorsement" as follows:

"15. Indorsement.-When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser"."

32. A Division Bench of the Kerala High Court has held in [Joseph Sartho v. G. Gopinathan, 2008 SCC Online Ker 254 : (2008) 3 KLJ 784] that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the cheque cannot be convicted for the offence under Section 138 of the Act. The High Court of Delhi addressed the same issue in [Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal, 2010 SCC Online Del 182 : ILR (2010) 3 Del 459]. The High Court observed that when part payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part-payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole amount represented in the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in [Shree Corpn. v. Anilbhai Puranbhai Bansal, (2018) 2 GLH 105].

33. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

34. In view of the discussion above, we summarise our findings below:

34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

34.2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

34.3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed

upon maturity, then the offence under Section 138 will stand attracted.

34.4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the "legally enforceable debt" on the date of maturity. Thus the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.

34.5. The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

10. In the present case also, the petitioners had admittedly issued a cheque for a sum of Rs.7,19,543/-. However, the respondent himself admitted that the petitioner No. 1 had remitted further part payments and had made purchase from the respondent and a sum of Rs.6,48,152/- plus interest on delayed payments, was still due and payable by him. However, I find merit in the submissions made by learned counsel for the petitioners. Since the respondent himself has admitted that an amount of Rs.6,48,152/- was balance outstanding amount, the respondent could not have presented a cheque of Rs.7,19,543/-, and the present petition deserves to be allowed by this Court.

11. In view of the above, the present petition is allowed and consequently, Complaint No. 4523 of 2019 titled as M/s Prestige Impex Vs. Shree Balaji Pigment Pvt. Ltd and others (Annexure P-3) under Section 138 of the NI Act, summoning order dated 23.09.2019 (Annexure P-4) passed by trial court and all subsequent proceedings arising therefrom are quashed. Pending application(s), if any, shall stand disposed off.

10.03.2026
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO