

**Court No. - 13**

**Case :-** APPLICATION U/S 482 No. - 4587 of 2023

**Applicant :-** Prashant Chandra

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home, Lko. And  
Others

**Counsel for Applicant :-** Vivek Kumar Rai,Radhika Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Suresh Kumar Gupta,J.**

1. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. In view of order proposed to be passed, issuance of notice to private opposite parties is dispensed with.
4. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the impugned order dated 25.4.2023 passed by the Additional Court no.2, Lucknow U/s 203 CrPC in Complaint No. 94684 of 2022, under Section 138 of the Negotiable Instruments Act, Police Station- Hazratganj, District- Lucknow and a direction may be issued to the court concerned to treat the demand notice dated 4.8.2022 as a valid notice of cheque amount of Rs. 50 lacs and summon the accused persons in accordance with law and conclude the trial at the earliest.
5. Learned counsel for applicant has submitted that the applicant presented the cheque of Rs. 50 lacs on 10.05.2022 bearing cheque

no. 025605 drawn on Axis Bank Limited, Mahanagar with his Banker, Bank of Baroda, Branch-Joppling Road, Lucknow, after opposite parties had given clearance but the same was dishonored vide bank return memo dated 03.08.2022 recording that the cheque was dishonored because of "Insufficient Funds".

6. It is further submitted by the learned counsel for the applicant that learned trial court dismissed the complaint under section 203 Cr.P.C. with perverse finding that the demand notice served to the accused persons is bad whereas the demand notice dated 04.08.2022 is wholly legal and as per the provisions of section 138 (b) Negotiable Instrument Act, 1881 (hereinafter referred to as "the Act, 1881") as well as the law laid down by the Apex Court in ***Suman Sethi Versus Ajay K. Churiwal and another (2000) 2 Supreme Court Case 380*** as in the demand notice dated 04.08.2022 there is break-up of the cheque amount of Rs. 50 lacs, and another amount of Rs. 50 lacs has been mentioned by virtue of the provisions contained in Section 138 of the Act 1881 along with 21 percent interest with quarterly interests w.e.f. 05.10.2022, as such the said demand notice cannot be termed as bad in the eye of law.

7. Further submission of the learned counsel for the applicant that the opposite parties gave two cheques dated 28.03.2022 bearing cheque no. 024363 for a sum of Rs. 11 lacs drawn on Axis Bank Limited, Mahanagar, Lucknow and another cheque dated 10.05.2022 bearing cheque no. 025605 drawn on Axis Bank Limited, Mahanagar, Lucknow for a sum of Rs. 50 lacs from the account of the opposite party no. 2 duly signed by the opposite party no.3. The petitioner deposited the cheque for Rs. 11 lacs on 28.06.2022 but the same was dishonored. The petitioner apprised the opposite parties about the dishonor of the said cheque and expressed his displeasure regarding the manner in which the opposite parties had deceitfully exacted a huge amount of Rs. 56 lacs from the petitioner. Impertinently the opposite parties maintained that things had got

delayed because of the after effects of COVID and the funds will soon be arranged for clearance of the cheques.

8. Learned counsel for the applicant has further submitted that the applicant filed the complaint under Section 138 of the Act, 1881 read with Section 142 of the Act, 1881 well within time before the Court of Additional Chief Judicial Magistrate-VI, Lucknow on 19.09.2022 which was admitted and transferred to Additional Court No. 2, Lucknow on the very next date.

9. It is further submitted that the notice dated 04.08.2022 which was issued under section 138(b) upon the cheque having been dishonored categorically mentioned the amount indicated in the dishonored cheque and a demand for payment of a sum of Rs. 50 lacs was made. Since the offence as per section 138 is deemed to have been committed upon dishonor of the cheque, the notice sent on behalf of the petitioner (complainant) also apprises the drawer about the cheque of the consequences of non-payment and mentions the maximum amount payable by the drawer on account of the offence under Section 138 having been committed. A copy of demand notice dated 04.08.2022 is annexed as Annexure No. 3 to this petition.

10. The contention of the learned counsel for the applicant is that in the impugned order dated 25.4.2023, the learned Magistrate has taken note of the fact that upon perusal of the notice of demand sent on behalf of the complainant by his lawyer it was apparent that a demand had been made to pay a sum of Rs. 50 lacs within 15 days of the receipt of the notice. Another Rs. 50 lacs has been mentioned by virtue of the provisions contained in Section 138 of the Act 1881 along with 21 percent interest with quarterly rests w.e.f. 05.10.2022. However, completely misreading the provisions contained in section 138 (b) and (c) of the Act 1881, the trial court has recorded that a demand only for the cheque amount could have been made and not of a further Rs. 50 lacs and interest with quarterly rests; and as such

the notice issued on behalf of the complainant was not compliant with the provisions of section 138 (b) of the Negotiable Instrument Act. It has accordingly been held that the demand notice is rendered illegal and does not satisfy the ingredients of section 138 (b) and (c) of the Act, 1881 and hence no offence had been committed and consequently there was no ground to summon the accused persons and the complaint was dismissed under Section 203 Cr.P.C.

11. Learned counsel for the applicant further submitted that the trial court rejected the complaint of Negotiable Instrument Act, 1881 in a mechanical manner vide order dated 25.4.2023 and it is liable to be quashed.

12. Learned AGA for the State submitted that there is no illegality, irregularity or perversity in the impugned order dated 25.4.2023 passed by the trial court and thus, it is not liable to be quashed.

13. In this petition, learned trial court rejected the summoning of the accused U/s 138 of the Act, 1881 with the findings that the applicant violated the provision of 138 (b) of the Act, 1881. So the moot question arises in this matter whether demand notice can be faulted if any other sum indicated in addition to the said amount U/s 138 (b) of the Act, 1881.

14. The provision of Section 138 (b) of the Act, 1881 deals with the demand notice which is given by the holder of the cheque. When we read Clause (b) and (c) of the proviso to Section 138, there is specifically mentioned, a whole word means "said amount of money". This is referred to as the words "payment of any amount of money," which means the cheque amount. so, in the notice under clause (b) to the proviso, the holder can demand only for the cheque amount.

15. As per the settled principle of the law, the demand notice should be read as a whole, and not consider only part of the notice. In the

demand notice, the holder or payee can demand to pay out for the said amount, i.e. cheque amount.

16. Now the main question arises here whether the holder adds such types of the amount then, what is the validity of said notice? It could be said that it depends on the language of the demand notice. When the holder demands these types of other amounts with the cheque amount, he has to be specified that amount with details in the notice. It does not affect of validation of such demand notice.

17. Thus, to make a valid demand notice as per the proviso of section 138 (b) of the Act, 1881, the notice should be mentioned in a separate portion of the due amount of bounced cheque, and other amounts which are additionally claimed i.e interest of loss, cost, etc.

18. As per the legislature which clearly explains that in provision of section 138 of the Act, 1881, it is mentioned that regarding the cheque bounce matter, the drawer would be liable for conviction if he does not make payment within 15 days after receipt of the notice.

19. So if the drawer pays the cheque bounce amount within the above period or before the complaint filed against him, he might be the end of his legal liability regarding the cheque U/s 138 of the Act, 1881 and for the recovery of other sums which is additionally mentioned in the notice, the payee should apply for the civil proceeding and that jurisdiction he can pray for that remedy.

20. In the case of *Suman Sethi (supra)*, the Supreme Court held that, as per the proviso clause (b) to the section 138 of the Act, 1881, demand has to be made for the cheque amount, however, it cannot be faulted if, in addition to “cheque amount” any other sum by way of interest, cost, etc. is separately indicated.

21. In the case of *Central Bank of India v. M/s. Saxons Farms, (1999) 8 JT (SC) 58*, the Supreme Court held that the object of the notice is to give chance to the drawer of the cheque to rectify his omission. Yet demand compensation, interest, etc. in the notice is

also made drawer will be exempted from his liability U/s 138 of the Act, 1881, if within 15 days from the date of receipt of the notice, he makes payment of the sum covered by the cheque of which he was informed or before a complaint is filed.

22. In the case of *Shailesh Kumar Agrawal vs. State of U.P. and others, (2000 CRI. L. J. 2921)*, this High Court held that the amount of cheque has been clearly mentioned in the notice. It may also be added that after the service of the notice no amount was tendered by the applicant, in case he would have tendered the amount of the cheque, it might have been argued that no offence under Section 138 of the Act, 1881 is made out. The applicant can not avoid the payment after the service of the notice on the ground that the cost of the notice was also demanded.

23. In the case of *Prasanta Kumar Basu vs. Narendra Kumar Anchalia and Anr, (2007 CRI. L. J. 1026)*, the Calcutta High Court held that, in the notice, besides the cheque amount, the complainant mentioned about the interest that would be charged against the accused, the same cannot be held to be bad in the eye of law.

24. In view of the above discussion, I could say that in a demand notice if other amounts is mentioned with the cheque amount in a separate portion in detail, the said notice can not be faulted in a legal term of the Section 138 (b) of the Act, 1881.

25. With these observations/directions, the application is **allowed** and the aforesaid impugned order 25.4.2023 is hereby set aside.

26. Thus, the matter be remanded back to the trial court to pass a fresh order after hearing the party.

**Order Date :- 10.5.2023**  
Shravan