

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 25.04.2025
Pronounced on 02.05.2025

**CRM(M) No. 798/2022
CrIM No. 1659/2022**

Pawan Kumar

.....Appellant(s)/Petitioner(s)

Through: Mr. Anil Khajuria, Advocate

vs

Ranbir Singh

..... Respondent(s)

Through: Mr. V Bhushan Gupta, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The respondent had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881(for short 'the Act') in respect of dishonour of two cheques i.e. cheque bearing No. 909039 dated 20.01.2021 for an amount of Rs. 10 lacs and cheque bearing No. 909040 dated 26.01.2021 for an amount of Rs. 11 lacs before the Court of learned Chief Judicial Magistrate, Kathua, subsequently assigned to the Court of learned District Mobile Magistrate, Kathua, (hereinafter to be referred as "the trial court").
2. The learned trial court vide order dated 10.09.2021 issued the process against the petitioner for commission of offence under section 138 of the Act. The respondent had relied upon the notice dated 28.04.2021, stated to have been served upon the petitioner, in order to fulfil the statutory requirement for filing the complaint under Section 138 of the Act.

3. The petitioner had preferred a revision against the order dated 10.09.2021 passed by the learned trial court before the Court of Principal Sessions Judge, Kathua but without any success, as the revision preferred by the petitioner was dismissed vide order dated 15.09.2022. This is how this petition has come up before this Court, whereby the petitioner has assailed the order dated 10.09.2021 passed by the learned trial court and order dated 15.09.2022 passed by the court of learned Principal Sessions Judge, Kathua.
4. It is contended by the petitioner that in the notice relied upon by the respondent for filing the complaint under Section 138 of the Act, the respondent had made a demand of Rs. 50,000/- as cheque amount from him within a period of 15 days from the date of receipt of that notice, therefore the notice being defective in nature could not have formed the basis for issuance of process against the petitioner for commission of offence under section 138 of the Act, for dishonour of two cheques amounting to Rs. 21 lacs.
5. Mr. Anil Khajuria, learned counsel for the petitioner has vehemently argued that once the notice was defective, the respondent could not have filed the complaint against the petitioner on account of dishonour of two cheques amounting to Rs. 21 lacs in total. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court of India in the case of **M/s Rahul Builders v M/s. Arihant Fertilizers and Chemicals and another, (2008) 2 SCC 321** and **K. R. Indira v Dr. G. Adinarayana, (2003) 8 SCC 300**.

6. *Per contra*, Mr. Ved Bhushan Gupta, learned counsel for the respondent, in turn, has submitted that the respondent had made the demand of amount *in lieu* of dishonoured cheques and in the notice, it is specifically mentioned that the petitioner has issued two cheques amounting to Rs. 21 lacs and payment were demanded in respect of same amount but due to typographical error, an amount Rs. 50,000/- was written in place of Rs. 21 lacs in the notice in question.
7. Heard and perused the record.
8. A perusal of the record annexed with the petition reveals that cheque bearing No. 909039 dated 20.01.2021 amounting of Rs. 10 lacs and cheque No. 909040 dated 26.01.2021 amounting of Rs. 11 lacs form the subject matter of the compliant, titled, 'Ranbir Singh vs Pawan Kumar' pending before the learned trial court. This is also true that in para-1 of notice dated 28.04.2021, the respondent has specifically stated that in order to discharge the past liability, the petitioner had issued two cheques mentioned above and these cheques were dishonoured vide memo dated 16.04.2021, but in the last para, where the formal demand was made by the respondent to make the payment of amount in lieu of cheques, figure of Rs. 50,000/- was mentioned in place of Rs. 21 lacs.
9. The memo placed on record by the petitioner reveals that cheque No. 909039 was dishonoured due to "signatures of the drawer being illegible" and cheque No. 909040 was dishonoured on account of "insufficient balance".
10. The sole contention raised by the petitioner is that once the demand of insufficient amount was made by the respondent through the medium of

notice dated 28.04.2021, he could not have filed the complaint against the petitioner for whole of the amount of Rs. 21 lacs.

11. In **M/s Rahul Builders(supra)** case, relied upon by the petitioner, the accused owed an amount of Rs. 8.72 lacs but had issued a cheque amounting to Rs. 1.00 lac only. Notice was served upon him by the complainant demanding whole of the outstanding amount of Rs. 8.72 lacs and no demand of Rs. 1.00 lac was made. In that context, the Hon'ble Apex Court held that the demand made by the complainant therein was not in accordance with law. In **K. R. Indira's case (supra)**, it was held by the Apex Court that consolidated notice may be valid, if it fulfils the requirement, but in the peculiar facts and circumstances of the case where a joint notice was sent by the husband and wife to the accused, it was held by the Hon'ble Supreme Court that the notice is not valid, as the demand was not made in lieu of cheque amount but for the loan amount.
12. The demand made by the respondent from the petitioner in last para of the legal notice dated 28.04.2021 is extracted as under:

“.....I, hereby call upon you through this Notice to pay Rs. 50,000/ as cheque amount to my client within a period of fifteen days from the date of receipt of this notice, failing which my client shall be constrained to file complaint under Section 138 Negotiable Act as well as civil suit in the competent Court of law at you risk and costs. A copy of this notice has been kept in my office for record and further action and I have charged my notice fee Rs. 5000/- from my client.....”.

13. A perusal of the demand made by the respondent would reveal that he has demanded Rs. 50,000/- as cheque amount from the petitioner. This Court would have agreed with the petitioner, had there been no reference to the expression “cheque amount” in the demand. It needs to

be noted that the notice is required to be read as a whole, and one solitary word/figure, which *ex facie* is not in sync with the tone and tenor of contents of the notice, cannot be made use of, to negate the whole purport of the notice.

14. In **Suman Sethi v. Ajay K. Churiwal, (2000) 2 SCC 380**, the Hon'ble Apex Court has held as under:

“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.”

(emphasis added)

15. In **Central Bank of India v. Saxons Farms, (1999) 8 SCC 221**, the Hon'ble Apex Court has held as under:

8. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant Bank regarding return of cheques as unpaid. Therefore, the only question to be examined is whether in the notice there was a demand for payment.

9. The last line in the portion of notice extracted above reads as under:

“Kindly arrange to make the payment to avoid the unpleasant action of my client.”

In our opinion it is a clear demand as required under clause (b) of Section 138.

(emphasis added)

16. It was vehemently contended by Mr. Khajuria that the respondent/complainant had restricted his claim to Rs. 50,000/- as cheque amount, but unfortunately for the petitioner, it is neither

forthcoming from the notice nor from the complaint. The judgments relied upon by the petitioner are not applicable to the present facts and circumstances of the case.

17. Viewed thus, the instant petition is devoid of any merit and is dismissed accordingly.

(RAJNESH OSWAL)
JUDGE

Jammu
02.05.2025
Vishal Sharma

Whether the order is speaking: Yes/Nb
Whether the order is reportable: Yes/Nb

