

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.22 of 2023

Smt. Nibedita Das aged about 50 years, W/O Ashok Kumar Das
R/O Puspanjali apartment, Flat No.100/B, South Office Para,
P.O.+P.S.- Doranda, District- Ranchi, PIN-834002 (Jharkhand)

... Petitioner

Versus

1. The State of Jharkhand	...	
2. Sanjay Bhagat, S/o Nand Kishore Bhagat, R/o Vidya Nagar, Road No.3 Near Kids Zone School, P.O. Harmu, P.S.- Sukhdeonagar, Dist- Ranchi, PIN-834002 (Jharkhand)	...	Opposite Parties

For the Petitioner : Mr. S. B. Gupta, Advocate
For the State : Ms. Priya Shrestha, Spl.P.P.
For the O.P. No.2 : Mr. Prakash Jha, Advocate
 Mr. Ankit Apurwa, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceedings in connection with Complaint Case No.6429 of 2022 including the order dated 05.08.2022 by which the learned Judicial Magistrate-XXVII, Ranchi has found *prima facie* case against the petitioner and has taken cognizance for the offence punishable under Section 138 of the N.I. Act and the said case is now pending in the court of learned Judicial Magistrate-XXVII, Ranchi.

3. The brief facts of the case is that the petitioner allegedly issued two cheques for Rs.10,00,000/- each as claimed by the learned counsel for the

opposite party No.2 and has been averred in the paragraph-7 of the complaint but in paragraph-8 of the complaint, it has been mentioned that the value of the cheque is Rs.1,00,000/-. The further allegation is that the petitioner issued two cheques to the complainant which were presented by the complainant with the State Bank of India. Both the cheques were dishonoured by the drawer bank and were returned along with the memorandum dated 02.02.2022 and 07.02.2022 with the endorsement 'Account Block' (situation covered in 21-25) and fund insufficient respectively. The undisputed case of the complainant is that after receiving the information of the aforesaid cheques, the complainant gave demand notice through his advocate on 30.03.2022 which was duly received by the accused person on 31.03.2022 but the petitioner-accused person, replied very rudely to the said notice and threatened the complainant not to file the case. The learned Magistrate, considering the materials available in the record, found sufficient grounds to proceed against the petitioner as it found *prima facie* case for the offence punishable under Section 138 of the N.I. Act against the petitioner.

4. Learned counsel for the petitioner draws the attention of this Court towards proviso (b) of Section 138 of the N.I. Act, 1881 and submits that the offence punishable under Section 138 of the N.I. Act can be made out if and only if the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid. Learned counsel for the petitioner further submits that the only date about the complainant receiving the information of dishonour of the cheques is

02.02.2022 and 07.02.2022. No other date has been mentioned, so, admittedly the notice of demand as envisaged in the said proviso (b) of Section 138 of the N.I. Act, 1881, has not been validly issued to the petitioner; as admittedly, the notice was issued beyond the period of 30 days from the date of receipt of information of the dishonour of the cheques. The learned Judicial Magistrate committed a grave error of law by ignoring this mandatory requirement of serving of demand notice within thirty days from receiving the information of the dishonour of the cheque. In support of his contention, learned counsel for the petitioner relies upon the judgment of the Hon'ble Gujarat High Court in the case of **B. K. Sarkar & Another vs. State of Gujarat & Another** reported in 2007 SCC OnLine Guj 249 paragraph-7 of which reads as under:-

"7. The only power under the N.I. Act to condone delay is provided under Section 142 of the N.I. Act, whereby it is provided that criminal complaint/case is required to be filed before the learned Magistrate within one month after completion of 15 days i.e. time limit as provided under Section 138 of the N.I. Act. However, for some reasons the complaint could not be filed within one month, the learned Magistrate is empowered to condone delay on sufficient grounds. Under the circumstances, whenever the Legislature has intended to condone the delay, same is provided and no such condonation of delay is provided in Section 138 of the N.I. Act. Under the circumstances, to condone delay in issuance of notice as contemplated under Section 138(b) of the N.I. Act would be to supplement to something what is not provided by the Legislature. Something which is not provided by the Legislature cannot be read in between. The provisions of statute, more particularly Section 138 of the N.I. Act is required to be complied with strictly and any deviation would entail consequences of non-maintainability of complaint. Under the circumstances, the contention on behalf of respondent No. 2. original complainant to read powers of the learned Magistrate to condone the delay by issuing notice under Section 138(b) of the N.I. Act considering provisions of Section 142 cannot be accepted. Power to condone delay as provided under Section 142 of the N.I. Act is to be read and considered only with regard to delay in filing the complaint within period of one month and it cannot be extended to condone delay with regard to other lapses more particularly delay in issuing notice as contemplated under Section 138(b) of the N.I. Act." (Emphasis supplied)

and submits that the provisions of Section 138 of the N.I. Act, 1881 requires to be complied with strictly and any deviation would entail consequences of non-maintainability of complaint and in this case as valid demand notice, as envisaged under 138 of the N.I. Act, has not been served upon the petitioner and without serving such notice as the criminal prosecution has been instituted, hence, it is submitted that the entire criminal proceedings in connection with Complaint Case No.6429 of 2022 including the order dated 05.08.2022 which is now pending in the court of learned Judicial Magistrate-XXVII, Ranchi, be quashed and set aside.

5. Learned Spl.P.P appearing for the State and the learned counsel for the opposite party No.2 on the other hand fairly submit that it has not been specifically mentioned that on which date the complainant came to know about the cheques being dishonoured but the very fact that the learned Magistrate has found *prima facie* case shows that the learned Magistrate was satisfied that the notice of demand for payment of the money mentioned in the cheque was received only within thirty days before issue of the notice of demand on 30.03.2022. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, this Court has no hesitation in holding that Section 138 to 142 of the N.I. Act has been inserted in the Negotiable Instruments Act by way of Amendment with the purpose of specifically to enhance the acceptability of cheques in settlement of liability by making the drawer liable for penalty in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the

arrangement made by the drawer with adequate safeguards to prevent harassment to honest drawer and one of the safeguards is that; for constituting the offence punishable under Section 138 of the N.I. Act, 1881, the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money mentioned in the cheque by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of the information by the complainant from the bank regarding the return of the cheque as unpaid. So, obviously, in the absence of compliance of this mandatory condition, certainly a complaint will not lie.

7. Now, coming to the facts of the case, the perusal of the record reveals that there is absolutely no averment made in the complaint that the complainant received the information regarding dishonour of the said two cheques issued by the petitioner on any day after 07.02.2022. So, the notice ought to have been issued on or before 08.03.2022 but as the month of February has only 28 days but admittedly the notice having been issued only after much delay on 30.03.2022 certainly, the learned Magistrate has committed a grave error in finding *prima facie* case for the offence punishable under Section 138 of the N.I. Act even if the mandatory requirement of serving the notice upon the respondent has not been complied with. At the cost of repetition, it is pertinent to mention here that it has been held by the Hon'ble Gujarat High Court in the case of **B. K. Sarkar & Another vs. State of Gujarat & Another (supra)** that, the Magistrate has no power to condone the delay in issuance of notice as contemplated under Section 138(b) of the N.I. Act.

8. Accordingly, this Court is of the considered view that the continuation of this criminal proceeding against the petitioner, when the offence punishable

under section 138 of the Negotiable Instrument Act, 1881 is not made out because, the notice of demand could not be served within the stipulated period of 30 days from the date of receipt of the information from the bank regarding dishonour of the cheques concerned; will amount to abuse of process of law and this is a fit case where the entire criminal proceedings in connection with Complaint Case No.6429 of 2022 including the order dated 05.08.2022 which is now pending in the court of learned Judicial Magistrate-XXVII, Ranchi, as prayed for by the petitioner, be quashed and set aside.

9. Accordingly, the entire criminal proceedings in connection with Complaint Case No.6429 of 2022 including the order dated 05.08.2022 which is now pending in the court of learned Judicial Magistrate-XXVII, Ranchi, is quashed and set aside.

10. In the result, this Cr.M.P. stands allowed.

11. The complainant, if so advised, may explore the possibility of filing the appropriate application, in accordance with law for redressal of his grievances.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 29th of January, 2024
AFR/ Animesh