

2007 PLRonline 0106 (SC)

Supreme Court of India

Present : Justice S.B. Sinha and Justice Harjit Singh Bedi.

RAHUL BUILDERS v. ARIHANT FERTILIZERS & CHEMICAL & ANR.

Criminal Appeal No. 525 of 2005

Negotiable Instruments Act, 1881 - Section 138 - Mandatory Service of Statutory Notice and its Validity - Nature of Statutory Notice - Must Demand “Cheque Amount” Specifically, and Not an Omnibus Sum.

A notice issued under **Proviso (b) to Section 138** must make a clear **demand for payment of the “said amount of money”**, which refers **specifically to the amount under the dishonoured cheque**. A general or omnibus demand for a larger outstanding sum without specifically requiring payment of the cheque amount does **not satisfy the statutory mandate**. The notice in the present case demanded the payment of Rs. 8,72,409/- as a lump sum due under pending bills, while **no demand was made for Rs. 1,00,000/-**, the cheque amount.

Such a notice is **vague**, fails to “subserve the requirement of law”, and renders the complaint **not maintainable** under Section 138.

“An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law... No demand was made upon it to pay the said sum of Rs. 1,00,000/-...” (Para 10)

Relied on:

Suman Sethi v. Ajay K. Churiwal, (2000) 2 SCC 380

K.R. Indira v. Dr. G. Adinarayana, (2003) 8 SCC 300

[Paras 9, 10, 11, 12, 13]

Negotiable Instruments Act, 1881 - Section 138 - Construction of Penal Provision - Strict Compliance

Required

Penal Nature of Section 138 - Strict Construction - Service of Valid Notice is a Condition Precedent

Section 138 is **penal in nature** and creates a **legal fiction** that the dishonour of cheque amounts to an offence. However, the application of this section is **subject to fulfilment of mandatory conditions**, particularly the **service of a notice of demand** as per **Proviso (b)**. Since it is a penal provision, **strict compliance** with all stipulated requirements is mandatory.

It is **imperative** that the notice contain a **clear, specific demand** for the cheque amount within 30 days of dishonour, failing which the main provision **does not apply**.

“Operation of Section 138 of the Act is limited by the proviso. When the proviso applies, the main Section would not... A penal provision should be construed strictly; the condition precedent wherefor is service of notice.” (Para 10)

[Paras 7, 8, 10]

Negotiable Instruments Act, 1881 - Section 138 Proviso (b) - No Requirement of “15 Days’ Notice”, But Compliance With Demand Timeline Mandatory - Notice Period - No Requirement of Giving 15 Days’ Time to Pay - But Demand Must Be Specific to Cheque Amount . Section 138 does not require the payee to give 15 days’ time to the drawer to make payment. Instead, it contemplates that the drawer must make payment within 15 days from the receipt of the notice. Hence, the High Court erred in quashing proceedings solely on the ground that the notice did not allow 15 days to the drawer. However, the notice itself was held invalid on another ground, namely that it did not demand the cheque amount, and this remained the substantive reason for upholding the High Court’s judgment.

“Section 138 does not speak of a 15 days’ notice... In absence of any such stipulation, it is

difficult to hold that 15 days' notice was thereby contemplated. The High Court, therefore, was not correct in arriving at the aforementioned finding.” (Para 8)

[Paras 4, 5, 6, 8]

Code of Criminal Procedure, 1973 - Section 482 - Inherent Powers - High Court Justified in Quashing Complaint for Defective Notice - Exercise of Inherent Jurisdiction - Quashing of Complaint Proper Where Statutory Conditions Under Section 138 Not Fulfilled. The High Court was correct in exercising its inherent jurisdiction under Section 482 of CrPC to quash the complaint, where it was found that the statutory preconditions under Section 138 were not fulfilled, particularly the requirement of a valid notice demanding payment of cheque amount. Where the basic ingredients of the penal offence are not satisfied, continuation of criminal proceedings amounts to an abuse of process of law. [Paras 1, 4, 13, 14]

FACTS OF THE CASE

The appellant, **Rahul Builders**, a partnership firm, entered into a [contract](#) with Respondent No. 1 for constructing a factory building.

Against pending dues of **Rs. 8,72,409/-**, the respondent issued a **cheque for Rs. 1,00,000/-**, which was dishonoured as the account was closed.

A **notice dated 31.10.2000** was issued, demanding the total outstanding dues without specifically demanding the **cheque amount**.

A complaint under **Section 138 of the NI Act** was filed upon non-payment.

The **High Court of Madhya Pradesh** quashed the complaint on grounds of **invalid notice**.

The Supreme Court, while disagreeing with the High Court's reasoning on the "15-day notice" issue, upheld the **quashing of proceedings**, affirming that the **notice did not**

meet statutory requirements, particularly as it failed to demand the **cheque amount of Rs. 1,00,000/-**.

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