THE HIGH COURT OF MEGHALAYA AT SHILLONG

: ORDER :

CRL. PETN. NO. 1 OF 2017

Sri Samar Sarmah Versus Sri Vivek Agarwala

Date of Order :: 29.06.2017

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

Shri A. Deb, for the petitioner.

Shri K. Paul, for the respondent.

AFR

BY THE COURT: (ORAL)

The present one is the third petition in this Court under Section 482 of the Code of Criminal Procedure ['CrPC'] by the petitioner, who is sought to be proceeded against for the offence under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as "the NI Act"] in the Court of Chief Judicial Magistrate, West Garo Hills, Tura in C.R. Case No.266 of 2015.

Shorn of unnecessary details, relevant aspects of the matter are as follows: The complainant/respondent has filed the complaint case aforesaid under Sections 138/142 of the NI Act while alleging dishonour of two cheques issued by the present petitioner, the particulars whereof are as under :

> *"(i) Cheque No.892545, dated 26.05.2015 for an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) drawn on State Bank of India, Guwahati Branch, Assam.*
>
> *(ii) Cheque No.125335, dated 02.06.2015, for an amount of Rs.16,50,000/- (Rupees Sixteen Lakhs and Fifty Thousand only) drawn on The Naini Tal Bank Ltd, Gaziabad Branch."*

The complainant/respondent submitted in his complaint that the aforesaid cheque bearing number 892545 dated 26.05.2015, when presented for collection, was returned unpaid by the petitioner's Banker with

the remarks “insufficient funds” under the Cheque Returning Memo dated 28.05.2015. The respondent further submitted that the other cheque bearing number 125335 dated 02.06.2015 for an amount of Rs.16,50,000/- was also returned unpaid by the petitioner’s Banker with the remarks “opening balance insufficient”. The respondent did not state in his complaint the date of Returning Memo concerning this cheque number 125335 but the learned counsel for the petitioner has shown the relevant part of the document during the course of hearing; and it remains rather indisputable that the said Cheque Returning Memo was issued by the petitioner’s Banker on 10.06.2015. This particular date of Returning Memo of cheque number 125335 carries relevance in this matter, as shall be noticed a little later.

The respondent asserted in his complaint that he verbally informed the petitioner about fate of the cheque but upon the petitioner paying no heed to the request, he was compelled to serve a notice through the lawyer on 11.06.2015, calling upon the petitioner to make payment of the dishonoured ‘cheque’ within a period of 15 days from the date of receipt of the notice. The assertions of the respondent, as occurring in paragraph 10 of the complaint, for their relevance, are reproduced as under:-

> *“That consequent upon the dishonour of the said cheque the Complainant verbally informed the Opposite Party about the fate of the said cheque and requested him to make the payment forthwith but the complainant did not pay any heed to the complainant’s requests as a result of which the Complainant was compelled to serve the Notice upon the Opposite Party through his Counsel on 11.06.2015 calling upon him to make the payment of the dishonoured cheque within a period of 15 days from the date of receipt of the said notice.”*

It could be noticed that in the aforesaid assertions, the complainant specifically referred to ‘the dishonoured cheque’ in singular at three places and not in plural. The respondent further referred to the reply received by him of the notice so served and while maintaining that the allegations of the petitioner in the reply were false and baseless, proceeded to assert that the petitioner had issued the aforesaid cheques dishonestly, while knowing well

that there was not enough money in his bank account to honour the cheque. Though in paragraph 13 of the petition, the complainant/respondent at some places mentioned about 'cheque(s)' but in paragraph 17, again, asserted about 'cheque' in singular.

At this juncture, the contents of the notice served on behalf of the complainant/respondent demanding payment need to be taken note of. This notice demanding payment was issued on behalf of the complainant respondent by his lawyer on 11.06.2015. Therein, at the very opening, demand was made for an amount of Rs. 31,50,000/- but while stating dishonour of cheque bearing number 892545 for an amount of Rs. 15,00,000/- in the following :-

> *".....At the instance of my Client **SHRI VIVEK AGARWAL**, I serve this Legal Notice upon you for immediate payment of **Rs. 31,50,000/-** (Rupees Thirty One Lakhs and Fifty Thousand only) for dishonour of Cheque bearing Cheque No. 892545 drawn on State Bank of India, Guwahati Branch, for an amount of Rs. 15,00,000/- due to insufficient funds in your account as follows: ....."*

Thereafter, it was alleged in the notice that the petitioner had taken financial assistance from the respondent of an amount of Rs. 31,50,000/- in the month of December, 2014 with the assurance of repayment by 31.03.2015. It was further alleged that for the purpose of repayment of the said assistance amount, the petitioner had issued the said two cheques viz, the cheque bearing number 892545 dated 26.05.2015 for an amount of Rs. 15,00,000/- drawn on State Bank of India, Guwahati Branch; and the other one bearing number 125335 dated 02.06.2015 for an amount of Rs. 16,50,000/- drawn on Nainital Bank Ltd., Ghaziabad Branch. In the said notice, thereafter, the facts were stated about dishonour of the cheque bearing number 892545 for insufficient funds but then, it was stated that there was 'strong apprehension' in the mind of the complainant/respondent that the other cheque bearing number 125335 would also meet the same

fate. The contents of paragraph 6 of this notice dated 11.06.2015 are as under:-

> "*That my Client presented the aforementioned Cheque bearing No. 892545, dated 26.05.2015, drawn on State Bank of India, Guwahati Branch, for an amount of Rs. 15, 00,000/- (Rupees Fifteen Lakhs only), for encashment to his Banker Union Bank of India, Tura Branch, but the same was dishonoured by your Banker, State Bank of India, Guwahati with the remarks "Insufficient Funds" vide Bank's Returning Memo dated 28.05.2015 (SBI, Tura Branch). Now there is a strong apprehension in the mind of my Client that the Cheque bearing No. 125335, dated 02.06.2015, drawn on The Nainital Bank Ltd, Ghaziabad Branch, issued by you to my client will also meet the same fate."*

As per the contents above-quoted, there remains hardly any doubt about the fact that as on the date of issuance of notice, only the cheque bearing number 892545 for an amount of Rs.15,00,000/- had returned unpaid. As regards the other cheque bearing number 125335, it had not been the assertion that the same had returned unpaid but, only a so-called 'strong apprehension' was stated in the notice.

In this notice dated 11.06.2015, while accusing the petitioner of dishonest intents, the demand was made on behalf of complainant/respondent of an amount of Rs.15,00,000/-, being the amount of dishonoured cheque bearing number 892545 as also another amount of Rs. 16,50,000/-, being the amount of other cheque bearing number 125335 apart from the charges for sending the notice in the following manner:-

> *"Under the circumstances, I am instructed by my Client to call upon you by this statutory notice under Sec. 138 of The Negotiable Instruments Act to make the payment of dishonoured Cheque amounting to Rs. 15,00,000/- (Rupees Fifteen Lakhs only) together with an amount of Rs. 16,50,000/- (Rupees Sixteen Lakhs and Fifty Thousand only) for the second cheque drawn on The Nainital Bank, within a period of 15 (fifteen) days from the date of receipt of this notice together with compensatory interest at the market rate, failing which I have further instructions from my Client to initiate appropriate criminal action against you under the provisions of The Negotiable Instruments Act, 1881, as amended up to date, and in that event you will be held liable for all costs and consequence arising therefrom.*
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> *You are liable to pay a sum of Rs. 5,000/- (towards the charges for sending the present notice. A copy of this Notice is retained by me for future reference and course of action."*

The material placed on record shows that upon presentation of the said complaint, learned Chief Judicial Magistrate, Tura proceeded to take

cognizance of the offence under Section 138 NI Act and issued summons to the present petitioner by the order dated 15.07.2015.

Having been summoned in relation to the complaint case aforesaid, the petitioner approached this Court by way of a petition under Section 482 CrPC, being Criminal Petition No.30 of 2015, that was considered and disposed of on 03.03.2016. A learned Single Judge of this Court, though took note of the contention of the petitioner that notice served on him was not in accord with the provisions of Section 138 of the NI Act, but took the view that the matter could better be decided by the Trial Court and hence, the petitioner was directed to approach the Trial Court on the point highlighted by him. This order dated 03.03.2016, as passed in Criminal Petition No.30 of 2015, reads as under:

> *"Heard learned counsel for the petitioner, Mr. A.Deb who submits that the instant petition has been filed praying to quash the proceeding pertaining to the Complaint Case (C.R.) No. 266/2015 pending before the Chief Judicial Magistrate, West Garo Hills, Tura.*
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> *Learned counsel for the petitioner contended that the proceeding under Section 138 N.I.Act has been taken for consideration without considering the fact that the petitioner was not informed and the legal notice served upon him is defective and as such, under the provision of Section 138 N.I.Act, the case cannot proceed as it suffers from serious irregularities.*
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> *Learned Sr. counsel, Mr. N.D.Chullai for the State of Meghalaya and Mr. K.Paul, learned counsel for the respondent No.2 appeared and submits that the petitioner can easily take this plea before the learned Court below before consideration of charge or at the time of consideration of charge.*
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> *After hearing the submissions advanced by learned counsels for the parties and after giving anxious thought, I am of the prima facie opinion that the matter can be decided by the learned Court below in a better manner as the entire case record is pending before the concerned Court. Just to call the record may waste unnecessary time so the petitioner is directed to approached the lower Court on the point highlighted by him noted above and learned Court concerned shall consider the matter in accordance with law.*
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> *With this observation and direction, the criminal petition stands disposed of."*

Pursuant to the order aforesaid, the petitioner filed his memo of objections before the learned Chief Judicial Magistrate, essentially with the submissions that the cheque bearing number 892545 was issued by a firm and hence, the complaint was not maintainable without joining the alleged contributories of that firm; and that the notice as issued in the matter was not

at all a notice under Section 138 of the NI Act because as on the date of the notice, cheque number 125335 dated 02.06.2015 had not returned unpaid. The objection petition so filed by the petitioner was considered and rejected by the learned Chief Judicial Magistrate by way of the order dated 08.09.2016. After taking note of the stand of respective parties, the learned Chief Judicial Magistrate stated the reason for rejecting the objections of petitioner at the given stage in the following:

> "*I am of the considered opinion that as my predecessor had taken up cognizance of offence against accused vide order dated 15.07.2015, whether or not the allegations in the complainant were true has to be decided on the basis of evidence to be led at the trial in this instant case.*
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> *Prayer of accused/petitioner to drop the proceedings on the ground of maintainability as the complainant had failed to fulfill the mandatory requirement before filing of the instant complaint case is hereby rejected at this stage."*

Aggrieved by the order aforesaid, the petitioner filed another petition in this Court under Section 482 CrPC, being Criminal Petition No.36 of 2016.

This petition was considered and disposed of by another learned Single Judge by way of the order dated 13.10.2016. Therein, the learned Single Judge noticed that the counsel for the petitioner did not press on the ground concerning the necessity of joining the firm as party to the complaint. As regards the other ground concerning validity of notice demanding payment, the learned Single Judge found that the proceedings under Section 251 CrPC were yet to take place. At that stage, the learned counsel for the petitioner sought permission to withdraw with liberty to raise the plea at the time of arguments on notice under Section 251 CrPC. Taking note of these submissions, the learned Single Judge proceeded to dispose of the second petition while observing and directing as under :-

> *"The other ground taken by petitioner is that notice as required under Section 138 of the Negotiable Instruments Act in respect of cheque No.125335 dated 02.06.2015 was not given by the respondent. Learned counsel for petitioner has pointed out that notice under Section-251 Cr.P.C. is yet to be given.*
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> *At this stage, Mr A. Deb, learned counsel for petitioner submits that he may be permitted to withdraw the present petition with liberty*

> *to raise this plea at the time of arguments on notice under Section-251 Cr.P.C.*
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> *After considering the facts and circumstances of the case and submissions made by learned counsel for petitioner, it is deemed appropriate to disposed of the petition at this stage with the direction that Trial Court will pass order as required under Section-251 Cr.P.C. after hearing both the parties, in accordance with law. The petitioner is at liberty to raise the plea taken herein at the time of hearing on notice under Section-251 Cr.P.C.*
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> *With the aforesaid observations, the present petition stands disposed of."*

Pursuant to the directions aforesaid, on the matter being taken up for the proceedings under Section 251 CrPC, the objections were again raised by the present petitioner as regards maintainability of the complaint, particularly because of defect in the statutory notice. The learned Chief Judicial Magistrate took note of the submissions of the parties and then observed that such an objection was 'not fatal' to the case of the complainant. The learned Chief Judicial Magistrate, therefore, rejected the objections of the petitioner while observing as under:

> "*In this instant case the complainant have issued a consolidated legal notice u/s 138 of the Negotiable Instruments Act 188 against the accused in respect of the two dishonoured cheques bearing No. 892545 dated 26.05.2015 and No. 125 335 dated 02.06.2015 respectively, by making demand payment of the amounts mentioned in the aforesaid two cheques.*
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> *The contention of Ld counsel for accused that the notice as prescribed under section 138 of the Negotiable Instruments Act 1881 is defective, can not be considered on the ground that it is not fatal to the case of the complainant.*
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> *This court is of the considered opinion that meticulous scanning of evidence in elaborate manner is not permissible at this stage.*
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> *For reasons stated above, the prayed of counsel for accused to dismiss this complainant case can not be considered at this stage and is hereby rejected."*

Aggrieved by the aforesaid order dated 30.01.2017, the petitioner has preferred the present one as the third petition in this Court under Section 482 CrPC. Learned counsel for the petitioner has referred to the facts of the case and has emphasised on the submissions that indisputably, until the time of issuance of notice dated 11.06.2015, cheque number 125335 had not returned unpaid and the respondent himself had stated only a so-called

apprehension in that regard. According to the learned counsel, such a demand, only on the basis of apprehension, cannot be said to be that of a valid notice for the purpose of Section 138 of the NI Act because such a demand could only be made after a cheque is returned unpaid and not before.

Learned counsel has also submitted that though on the date of issuance of notice dated 11.06.2015, the first cheque bearing number 892545 had allegedly returned unpaid but the said cheque was only for an amount of Rs.15,00,000/- whereas the complainant demanded an excessive amount of Rs.31,50,000/- in the questioned notice dated 11.06.2015.

With reference to the decision of the Hon'ble Calcutta High Court in the case of ***Gopa Debi Ozha v. Sujit Paul : 1995 STPL (LE-Crim) 7745 CAL***, the learned counsel has strenuously argued that a valid notice for the purpose of Section 138 NI Act could only be the one where demand is made of the amount of cheque and, for making the demand of excessive money, the notice as issued by the complainant/respondent in the present case is not a valid one and for this reason alone, the entire proceedings under Section 138 NI Act deserve to be quashed. Learned counsel would submit that this significant part of the submissions has not been considered by the learned Chief Judicial Magistrate in proper perspective and hence, the petitioner has no option but to approach this Court over again.

Per contra, learned counsel for the complainant/respondent has vehemently argued with reference to the decision of Hon'ble Supreme Court in the case of ***K.R.Indira v. Dr G.Adinarayana : (2003) 8 SCC 300*** that serving of a consolidated notice towards dishonoured cheques is not in violation of the requirements of law; and the mere fact that in the consolidated notice, further demands in addition to the statutory demand are made, the notice is not rendered invalid for this reason alone. Learned

counsel has also emphasised on the submissions that in the present case, as on the date of issuance of the notice, even the second cheque bearing No.125335 had also been returned by the Banker unpaid for want of funds and this particular fact that the said cheque was indeed returned unpaid being not in dispute, the language of the notice stating mere apprehension is not decisive of the matter. On the contrary, according to the learned counsel, on the substance of matter, it is but clear that the respondent had rightfully demanded the amount payable under the said two cheques and when both of them had returned unpaid before filing of the complaint and admittedly, no payment thereunder had been made by the petitioner, the complaint cannot be said to be defective or invalid. Learned counsel has also submitted that the present one is rather a third round of petitions in this Court and obviously, the only intention of the petitioner is to somehow avoid the proceedings and such a petition deserves to be rejected with directions to Trial Court to proceed expeditiously in the matter.

Having given thoughtful consideration to the rival submissions and having examined the record, this Court is clearly of the view that Complaint Case No.266 of 2015 in the Court of Chief Judicial Magistrate, West Garo Hills, Tura is not maintainable so far cheque number 125335 dated 02.06.2015 is concerned but there is no reason that this complaint case will not proceed in relation to cheque number 892545 dated 26.05.2015 for an amount of Rs.15,00,000/-.

True it is that the present one is the third petition under Section 482 CrPC in this matter but, where it is noticed that the learned Chief Judicial Magistrate, West Garo Hills, Tura, despite two orders of this Court, has not examined the substance of the objections of the petitioner, this Court finds no reason that the present petition, even if third in succession, be not entertained. Moreover, when this Court finds ends of justice being defeated

for the subordinate Court not proceeding in accordance with law, it becomes rather imperative that the petition be entertained in the demands of justice and the order questioned in this petition be modified suitably. Thus, the objection of the learned counsel for the respondent against maintainability of this petition stands rejected.

For examining the submissions made on behalf of the parties, appropriate it would be to take note of the relevant parts of Section 138 of the NI Act as follows:-

> *"138.* ***Dishonour of cheque for insufficiency, etc., of funds in the account. –*** *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
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> *Provided that nothing contained in this section shall apply unless-*
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> *(a)* * * *
>
> *(b) 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 information by him from the bank regarding the return of the cheque as unpaid; and*
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> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.*
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> * * *"

So far the issue concerning cheque number 125335 dated 02.06.2015 is concerned, it is but clear and remains indisputable that as on the date of issuance of the notice dated 11.06.2015, the said cheque (No. 125335) had not been returned unpaid by the Bank to the respondent. As per the contents of the notice itself, at that stage, the respondent was only entertaining an apprehension that this cheque number 125335 dated

02.06.2015 would also 'meet the same fate' as had been that of the other cheque number 892545 dated 26.05.2015.

The said first cheque number 892545 dated 26.05.2015, drawn on State Bank of India, Guwahati Branch for an amount of Rs.15,00,000/- had, of course, been returned unpaid under the Returning Memo dated 28.05.2015 and in fact, this Returning Memo formed the basis of the notice dated 11.06.2015. However, for the reasons best known to the respondent and his advisers, in this notice dated 11.06.2015, the demand was made not only of the amount of Rs. 15,00,000/- of the dishonoured cheque (No. 895425) but also of the amount of other cheque (No. 125335) though, until that time, the complainant/respondent had not received the information of dishonour and return of the said second cheque bearing number 125335.

The submission that there is no dispute about the return of this particular cheque (No.125335) also as unpaid for want of funds hardly makes out a case in favour of the respondent for the simple reason that the notice dated 11.06.2015 cannot be construed as a notice envisaged under proviso (b) to Section 138 of the NI Act in regard to this cheque (No.125335). It remains elementary that the very occasion for issuance of the notice under proviso (b) to Section 138 NI Act would be upon the payee or the holder of the cheque receiving information from the Bank regarding return of the cheque as unpaid for want of sufficiency of funds in the account of drawer of the cheque or for it exceeding the arrangement. After having received such information, the payee or holder of the cheque is required to make a demand for payment of the amount of money represented by the said cheque; and such a notice is required to be given within 30 days of the receipt of the information from the Bank regarding return of the cheque as unpaid. Thus, a notice for the purpose of Section 138 could only be issued upon or after receipt of the information regarding return of the cheque as

unpaid; and a notice sent before such information on the so-called apprehension cannot, in any manner, be construed as a notice for the purpose of Section 138 of the NI Act.

Though it appears that the Returning Memo in relation to the said cheque bearing number 125335 was issued by the Banker concerned on 10.06.2015 that is, a day before issuance of notice on behalf of the complainant, however, as noticed, the respondent had not received such information. This fact is clearly established from the very contents of the notice that the demand of the amount of cheque number 125335 was made only on apprehension and not on the basis of the information from the Bank. This being the position, this Court has no hesitation in holding that, qua the said cheque bearing number 125335, the notice dated 11.06.2015 cannot be taken to be a valid notice for the purpose of Section 138 NI Act.

The decision of the Hon'ble Supreme Court in *K.R. Indira's* case (supra) does not lend any support to the case of the complainant so far cheque number 125335 is concerned. On the principles in *K.R. Indira,* in case of dishonour of more than one cheques issued by the same accused, serving of the consolidated notice does not invalidate the same but, as noticed, the occasion for serving such consolidated notice would be only upon receipt of the information of dishonour of the cheque/s. In the case of the present nature, where the notice was sent in relation to two cheques, one of which had been returned unpaid but as regards the other, only an apprehension was stated, the consolidated notice, one of existing cause of action and another on a presumed cause of action cannot be taken to be a legally valid notice, for the purpose of Section 138 of the NI Act, particularly as regards the cheque that had not been received back unpaid by the respondent at the time of issuance of the notice. It is not in dispute that no other notice was issued by the respondent before filing the complaint in

relation to cheque number 125335 after receiving the information of its dishonour.

For what has been discussed hereinabove, this Court is clearly of the view that, for want of a legally valid notice as per proviso (b) to Section 138 of the NI Act, the complaint in relation to cheque number 125335 is not maintainable and cognizance of the offence under Section 138 of the NI Act cannot be taken qua this cheque on the complaint so filed by the respondent.

However, even after finding that the complaint case in question cannot proceed in relation to cheque number 125335, this Court is clearly of the view that the entire complaint case cannot be quashed and there is no reason as to why this case will not proceed in relation to cheque number 892545 dated 26.05.2015 for the sum of Rs. 15,00,000/-. This is for the simple reason that the invalid part of the impugned notice dated 11.06.2015, i.e., the part concerning cheque number 125335 can be segregated from the other, but valid, part of the notice concerning cheque number 892545 dated 26.05.2015.

It is not in dispute that as on the date of issuance of this notice dated 11.06.2015, cheque number 892545 dated 26.05.2015 had already been returned unpaid for want of insufficient funds. The notice dated 11.06.2015 cannot be taken as invalid so far cheque number 892545 is concerned. True it is that in this notice, the demand had been of the total amount of Rs.31,50,000/- but, there had been two distinct demands in the notice, as noticed hereinabove: one for the amount of Rs.15,00,000/- concerning the cheque that had already been dishonoured as also for the amount of Rs.16,50,000/- of the second cheque (for which the complainant was entertaining apprehension). True further it is that for a valid notice for the purpose of Section 138 NI Act, the demand has to be of the amount of

money represented by the dishonoured cheque but it is not a blanket proposition in law that every notice demanding a higher amount than the amount of dishonoured cheque is invalid for such higher demand alone. Having examined the decision of the Hon'ble Calcutta High Court in *Gopa Debi Ozha* (supra), as relied upon by the learned counsel for the petitioner, this Court, with respect, could only express its inability to agree on the blanket proposition stated therein. The law in this regard is more or less well settled that the notice is essentially intended to provide sufficient information and specific demand for the payment of sum covered by the cheque dishonoured. In *K.R. Indira* (supra), the Supreme Court has, inter alia, pointed out as under:

> *" In a given case if the consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand were also found to have been made may not invalidate the same."*

The principles of law applicable to the present case could be noticed in a little more detail with reference to the decision of Hon'ble Supreme Court in the case of ***Suman Sethi v. Ajay K. Churiwal : (2002) 2 SCC 380***. In the said case, by way of notice of demand as required by proviso (b) to Section 138 of the NI Act, the appellant was called upon to pay the amount of cheque along with incidental charges as also the charges for serving the notice. In the said case, the Hon'ble Supreme Court pointed out that as required by the said clause (b) of the proviso to Section 138 NI Act, demand has to be made for the cheque amount, which is referred to as the 'said amount'. The Hon'ble Supreme Court has further pointed out that if in the notice, an omnibus demand is made without specifying as to what is the demand against the dishonoured cheque, the notice might fail to meet the legal requirements, but if in the notice, any other sum is indicated, in addition to the amount of dishonoured cheque, the notice cannot be faulted at. The

Hon'ble Supreme Court has also pointed out that if the additional claims are severable, they would be treated as superfluous and will not invalidate the notice. The Hon'ble Supreme Court has, inter alia, observed and held as under:-

> *"7. There is no ambiguity or doubt in the language of Section 138. Reading the entire section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in a notice under clause (b) to the proviso, the demand has to be made for the cheque amount. According to Dr Dhavan, the notice of demand should not contain anything more or less than what is due under the cheque.*
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> *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.*
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> *9. This Court had occasion to deal with Section 138 of the Act in Central Bank of India v. Saxons Farms and held that the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. Though in the notice demand for compensation, interest, cost etc. is also made the drawer will be absolved from his liability under Section 138 if he makes the payment of the amount covered by the cheque of which he was aware within 15 days from the date of receipt of the notice or before the complaint is filed.*
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> *10. In Section 138 the legislature clearly stated that for the dishonoured cheque the drawer shall be liable for conviction if the demand is not met within 15 days of the receipt of notice but this is without prejudice to any other provision of the Act. If the cheque amount is paid within the above period or before the complaint is filed the legal liability under Section 138 will cease and for recovery of other demands as compensation, costs, interest etc., a civil proceeding will lie. Therefore, if in a notice any other sum is indicated in addition to the "said amount" the notice cannot be faulted, as stated above."*
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> (underlining supplied)

In the present case, as noticed, the excess demand had been in relation to the other cheque for which the complainant was apprehensive of dishonour. Such a demand, for the purpose of Section 138 NI Act, has not been found valid for the reason that as on the date of notice, the complainant/respondent had no information of dishonour of the said second cheque number 125335, drawn for the amount of Rs.16,50,000/-. This

invalid part of the notice is a matter entirely different and can easily be segregated without affecting the validity of the notice demanding payment of the amount of dishonoured cheque number 892545 i.e., Rs.15,00,000/-. The respondent having specifically demanded payment of the amount of dishonoured cheque in this notice, any other demand could only be treated as superfluous but cannot invalidate the notice for the purpose of the said cheque number 892545. Thus, there is no reason as to why the complaint case in question will not proceed qua this cheque bearing No. 892545 dated 26.05.2015 for an amount of Rs.15,00,000/-.

Accordingly, and in view of the above, this petition is allowed in part and in the manner that Complaint Case No.266 of 2015 cannot proceed under Sections 138/142 of the NI Act in relation to the cheque bearing number 125335; however, the proceedings in this complaint case are held maintainable in relation to the dishonour of cheque bearing number 892545 dated 26.05.2015 for an amount of Rs.15,00,000/- and need to be taken up expeditiously. The impugned order dated 30.01.2017 stands modified accordingly.

The learned Chief Judicial Magistrate, West Garo Hills, Tura shall now take up the matter in Complaint Case No.266 of 2015 afresh from the stage of Section 251 CrPC and shall proceed expeditiously and in accordance with law, while keeping in view the observations and directions foregoing.

CHIEF JUSTICE

marlene
Item No. 1