

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No..... of 2023
Special Leave Petition (CrI.) No.9062/2023

UPASANA MISHRA

Appellant

VERSUS

TREK TECHNOLOGY INDIA PVT. LTD.

Respondent

O R D E R

1. Leave granted.

2. The appellant assails the final order dated 13.04.2023 passed by the High Court of Delhi at New Delhi in CRMC No.2528/2023. As per the impugned order, the prayer of the petitioner for quashing the summoning order dated 19.01.2016 passed by the learned Metropolitan Magistrate, NI Act 02, South East, Saket Courts, New Delhi in CC No.631164/2016 was dismissed.

3. Heard learned counsel appearing for the appellant as also the learned counsel appearing for the respondent.

4. Paradoxically, learned counsel on both sides relies on the decision of this Court in "*Suman Sethi Vs. Ajay K. Churiwal & Another* [(2002) 2 SCC 380]". While the appellant contends that in terms of the dictum laid in the said decision, Annexure P-2 notice dated 02.12.2013 is invalid for non-adherence with the mandatory legal requirement under the provisions of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act'), the learned counsel

for the respondent would submit that in terms of the dictum laid down in the said decision, it is perfectly legal and valid. In view of the rival contentions, we have carefully gone through Annexure P-2 notice bearing in mind the dictum laid down by this Court in the case of *Suman Sethi* (supra).

5. The relevant paragraph of the decision in *Suman Sethi's* case (supra) is extracted for a proper disposal of this case:

"8. It is 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. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "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 dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad.

9. This Court had occasion to deal with Section 138 of the Act in *Central Bank of India & Anr. v. M/s. Saxons Farms & Ors.*, JT (1999) 8 SC 58 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 drawer will be absolved from his liability under Section 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 complaint is filed.

As therein, some other sums were indicated in addition to the amount of cheque, it was, therefore, not held to be a case where the dispute might be existing in respect of the entire outstanding amount."

(Emphasis added)

6. A bare perusal of the decision referred (supra) would reveal that a demand in addition to the cheque amount in a demand notice by itself would not make it invalid. In other words, as held therein, in the demand notice, demand has to be made for the 'cheque amount' and therefore, notice sans such demand would fall short of legal requirement. At the same time, we will reiterate the position that if in a notice while giving the break up of the claim the cheque amount interest, damages, etc. are separately specified and these additional claims would be severable, such demand would not invalidate the notice. In short, in a notice of demand made under the N.I. Act demand shall not be omnibus, there must be a clear demand for the cheque amount lest notice will be invalid. This law laid down as above has to be applied to decide the validity or otherwise of Annexure P-2-demand notice.

7. The last paragraph in Annexure-P2 notice carries the demand and we will refer to the demand made thereunder. It read, thus:

*"9.
.....
I, therefore through this legal notice call upon you to make the party of the doubt amount of the cheque i.e.*

Rs.6,50,000/- (Rs. Six Lakh Fifty Thousand Only) with interest @12% per annum since 12.11.2013 and further pay the damaged at Rs.50,000/- (Rs. Fifty Thousand Only) per month within stipulated period from the receipt of this notice failing which I have clear instructions from my aforesaid clients to take legal action against you in the competent courts, holding you responsible for entire cost and consequences with litigation charges of Rs.5,500/- (Rs. Five Thousand Five Hundred Only) as charges of this notice.

Copy of this kept for further reference."

(Emphasis added)

8. A scanning of Annexure-P2 notice would reveal that an omnibus demand for Rs.6,50,000/- was made in addition to the demand for interest @12 per annum since 12.11.2013, the date of returning of the cheque, Rs.50,000/- towards damages and Rs.5,500/- as notice charge. The demand is omnibus as relates the amount of Rs.6,50,000/- as admittedly, it is not the cheque amount and in addition under Annexure P-2-notice, interest @12% per annum from 12.11.2013, damages at Rs.50,000/- per month and Rs.5,500/- as notice charge were also demanded. Such circumstances discernible from the demand notice on application of the law laid by this Court in the case of *Suman Sethi* (supra), would make Annexure-P2 notice of demand invalid. Hence, we are of the view that the impugned order invites interference. In that view of the matter, the Appeal stands allowed. Consequently, the impugned order dated 13.04.2023 passed by the High Court of Delhi at New Delhi in CRMC No.2528/2023 stands set aside and as a necessary sequel, the summoning order dated 19.01.2016 passed by the learned Metropolitan Magistrate, NI

Act 02, South East, Saket Courts, New Delhi shall also stand quashed.

9. Pending application(s), if any, shall stand disposed of.

.....J.
(C.T. RAVIKUMAR)

.....J.
(SANJAY KUMAR)

NEW DELHI;
DECEMBER 12, 2023.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.9062/2023

(Arising out of impugned final judgment and order dated 13-04-2023 in CRLMC No. 2528/2023 passed by the High Court of Delhi at New Delhi)

UPASANA MISHRA

Petitioner(s)

VERSUS

TREK TECHNOLOGY INDIA PVT. LTD.

Respondent(s)

Date : 12-12-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Sanjay Gupta, Adv.
Mr. Mansoor Ali, AOR
Mr. Bilal Mansoor, Adv.
Mr. K.P. Singh Chohan, Adv.

For Respondent(s) Mr. Saif Zia, Adv.
Mr. Ejaz Maqbool, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The Criminal Appeal stands allowed in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)