



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

136

CRM-M-36903-2025 (O&M)

Date of decision: 17.07.2025

A.H. Fashion Karma Pvt. Ltd. and anotherPetitioners

Versus

The State of Punjab and othersRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAULPresent : Mr. Chaitanya Rohilla, Advocate (through VC)
for the petitioner.

MANJARI NEHRU KAUL, J.

1. The present petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS'), seeking quashing of Complaint bearing No.COMA/11704/2021 titled as 'M/s Cotton and Blends Inc. Vs. M/s A.H. Fashion Karma Pvt. Ltd. and another', dated 03.08.2021 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioners has primarily assailed the maintainability of the proceedings under Section 138 of the NI Act, on the ground that the legal demand notice dated 02.07.2021, issued by respondent No.3 is legally defective and hence, does not satisfy the mandatory pre-condition stipulated under the NI Act. It has been contended that the said notice failed to disclose the fact of a part payment of Rs.12,36,000/-, admittedly made by the petitioners on 14.06.2021 through RTGS, prior to the issuance of the demand notice. It is further submitted that this payment is not denied by the



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complainant, and in fact, has been specifically acknowledged by respondent No.3 in the complaint filed before the Trial Court.

3. Learned counsel for the petitioners submits that the failure to mention or give credit to such part payment in the legal notice renders the statutory demand non est in the eyes of law. It has been asserted by the learned counsel that such a notice, being misleading and incomplete in material particulars, cannot be said to constitute a 'valid demand' as contemplated under Section 138 of the NI Act.

4. I have heard learned counsel for the petitioners and perused the relevant material on record.

5. At the outset, it is not in dispute that the petitioner has not denied the issuance of the check in question nor has he disputed the signatures appearing thereon. The primary objection raised pertains to the alleged omission of a part payment made before the issuance of the legal notice.

6. It is trite law that while exercising inherent powers under Section 528 of the BNSS, this Court does not function as a Trial Court and ordinarily refrains from entering into disputed questions of fact which require appreciation of evidence. The jurisdiction under Section 528 of the BNSS is meant to be exercised sparingly, with circumspection, and in cases where there is a clear abuse of the process of law or where the complaint is wholly vexatious or lacks the basic ingredients of the offence alleged.

7. In the present case, the core issue raised by the learned counsel for the petitioner, namely, whether the omission of reference to



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an alleged part payment in the legal notice vitiates the statutory demand, cannot be adjudicated in proceedings under Section 528 of the BNSS, particularly when the said payment, although purportedly admitted in the complaint, may have a bearing on the amount due, quantum of liability, or the defence under Section 139 of the NI Act. These are essentially matters for trial. The complainant's failure to mention a prior payment may have evidentiary consequences, but the same does not *ipso jure* render the complaint unsustainable under Section 138 of the NI Act.

8. In view of the above discussion, this Court is of the considered view that the petitioner has failed to make out a case for quashing of the complaint under Section 138 of the NI Act. The issues raised by the petitioner are in the realm of defence and must be adjudicated on the basis of evidence during the trial.

9. Consequently, the petition is devoid of merit and is accordingly dismissed.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11. Pending applications, if any, stand disposed of.

17.07.2025

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No