IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

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BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.1923 OF 2020

BETWEEN:

1. PRASAD A.,
   S/O LATE ANNAIAPPA,
   HINDU,
   AGED ABOUT 52 YEARS,
   R/AT PUMA PARADISE,
   NO.13, 14, KIADB QUARETERS,
   BOMMASANDRA INDUSTRIAL ESTATE,
   ATTIBELE HOBLI, ANEKAL TALUK,
   BENGALURU-560099.

...PETITIONER

(BY SRI. SRIDHAR CHAKRAVARTHI M.V., ADVOCATE)

AND:

1. B. LINGAPPA,
   S/O BEERANNA,
   HINDU,
   AGED ABOUT 53 YEARS,
   NO.2, BOMMASANDRA VILLAGE,
   ATTIBELE HOBLI, ANEKAL TALUK,
   BENGALURU RURAL DISTRICT-562106.

...RESPONDENT

(BY SRI. .,ADVOCATE)

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASHING OF THE ORDER OF COGNIZANCE DATED 03.08.2019 AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.17775/2019, PENDING ON THE FILE OF THE HONBLE XV ACMM AT BENGALURU.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.11.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The prayer sought in the petition is to quash the order of cognizance dated 03.08.2019 and consequently to quash the entire proceedings in C.C.No.17775/2019.

3. The complainant/respondent has initiated a proceedings under Section 138 of the Negotiable Instruments Act against the petitioner herein for bouncing of cheque and the Trial Court took the cognizance having recorded the sworn statement and particularly marking of document Ex.P.1 for Rs.50,00,000/- in respect of cheque bearing No.249539 dated 25.02.2019 and also another cheque Ex.P.2 for Rs.50,00,000/- in Cheque No.249540 dated 05.03.2019. The certified copy of the complaint is marked as Annexure-B and other documents are also produced before the Court. The Trial Court took the cognizance for both the cheques to the tune of Rs.1 Crore. The certified copies of legal notice dated 24.06.2019 and two reply

notices issued by the accused counsel on 04.07.2019 are marked herein as Annexures-C, D and E.

4. The main contention of the learned counsel for the petitioner before this Court is that as per paragraph No.4 of the complaint, the accused had approached the complainant in the month of October 2018 to transact in a property belonging to the complainant and the accused promised to give Rs.2 Crores as non-refundable amount, but not as advance sale consideration so that the complainant shall not negotiate the property with anyone. The main contention focused by the learned counsel for the petitioner is that though two cheques are issued and both cheques are bounced and legal notices are issued, only one notice is produced, but not produced two notices. The Trial Court took the cognizance for an amount of Rs.1 Crore and hence, there is a fundamental defect in non-production of both the notices and in spite of it, the Trial Court committed an error in initiating the proceedings under Section 138 of NI Act. The learned counsel would contend that the complaint is liable to be dismissed for suppression and misrepresentation of facts i.e., Ex.P.7 which is the reply legal notice to the notice to the first demand notice dated 19.06.2019 got issued by the complainant which has been

deliberately suppressed by the complainant as he has taken different stands i.e., in the first notice dated 19.06.2019, the complainant has stated that the accused had obtained loan of Rs.50,00,000/- and on the contra in the second notice issued on 24.06.2019, he has stated that the entire transaction of two cheques i.e., subject matter of dispute Exs.P.1 and P.2 are pertaining to real estate transaction and in view of suppression of the notice, it requires invoking of Section 482 of Cr.P.C.

5. The learned counsel in support of his arguments relies upon the judgment of the Apex Court in the case of **RAHUL BUILDERS v. ARIHANT FERTILIZERS AND CHEMICALS AND ANOTHER** reported in **(2008) 2 SCC 321** and would contend that service of a notice is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the proviso. The compliance of Section 138(b) is very necessary or otherwise the complaint would not be maintainable.

6. The learned counsel also relies upon the judgment of the Apex Court in the case of **MEHMOOD UL REHMAN v. KHAZIR MOHAMMAD TUNDA AND OTHERS** reported in **(2015) 12 SCC 420,** wherein discussion was made with

regard to Section 190 of Cr.P.C. for taking of cognizance as well as Sections 200, 202 and 204 of Cr.P.C. for issuance of process. The learned counsel referring this judgment brought to the notice of this Court the scope of complaint and taking of cognizance relying upon paragraph Nos.22 and 23 of the judgment that application of mind by the Judicial Officer while taking cognizance and issuing process is necessary.

7. The learned counsel also relies upon the judgment of the Apex Court in the case of **H.N. JAGADEESH v. R. RAJESHWARI** reported in **(2019) 16 SCC 730** and brought to the notice of this Court paragraph Nos.3, 6 and 7, wherein it is observed that the learned counsel for the respondent has submitted that in order to advance the cause of justice, such an approach is permissible and for this purpose he has relied upon the judgment of this Court in **Zahira Habibulla H. Sheik v. State of Gujarat** reported in **(2004) 4 SCC 158.** It is held that we are afraid that the ratio of the aforesaid judgment cannot be extended to the facts of this case, particularly when we find that the present case is a complaint case filed by the respondent under Section 138 of the Act.

8. The learned counsel also relies upon the judgment of the Apex Court in the case of **KAVERI PLASTICS v. MAHDOOM BAWA BAHRUDEEN NOORUL** reported in **AIR 2025 SC 4446** and brought to the notice of this Court the discussion made in paragraph No.7, wherein it is held that when the proviso (b) to Section 138 stipulates the service of notice as one of the conditions for constituting the offence, and when the words 'said amount' is incorporated in the language of the provision, it is the amount which is specifically referable to the amount recoverable under the cheque in question. In paragraph No.10 it is held that reverting to recollect the facts of this case, the cheque which was drawn by the respondent was for Rs.1,00,000/- whereas in the notice issued under Proviso (b) to Section 138 of the NI Act against the respondent, the appellant mentions the amount of Rs.2,00,000/-. The rigours of law on this score being strict, the defence would not hold good that the different amount mentioned in the notice was out of inadvertence.

9. The learned counsel also relies upon the judgment of the High Court of Judicature at Madras passed in Crl.O.P.No.1377/2023 and Crl.M.P.Nos.1117/2023 and 1118/2023 dated 21.02.2025, and contend that even after the

trial also the Court can exercise the power under Section 482 of Cr.P.C. after examination of the witness. The learned counsel also brought to the notice of this Court paragraph No.13, wherein it is held that though the trial is commenced by the Trial Court, by chief examination of PW1, this petition to quash the entire proceedings is very much maintainable under Section 482 of Cr.P.C.

10. Per contra, the learned counsel for the respondent submits that dishonour of cheques is not in dispute and issuance of notice is also not in dispute and only at the time of sworn statement, one of the notice was not produced by inadvertence and the same is not a fundamental defect as contended by the learned counsel for the petitioner. The learned counsel would submit that it is a curable defect and the said notice can be produced at any stage before conclusion of trial and the law is settled with regard to the said fact. The learned counsel would contend that the judgment relied upon by the learned counsel for the petitioner in the case of **Rahul Builders** (supra) is not applicable to the case on hand. Paragraph No.10 of the said judgment is very clear i.e., compliance of proviso (b) to Section 138 of the NI Act and the same is complied by issuance of notice. The learned counsel

also submits that the judgment in the case of **Mehmood Ul Rehman** (supra) is also not applicable and paragraphs Nos.22 and 23 of the said judgment is with regard to the application of mind at the time of issuance of process. The learned counsel also would contend that the judgment of **H.N. Jagadeesh** (supra) is also not applicable. Paragraph No.3 relied upon by the learned counsel for the petitioner is very clear that the Trial Court while acquitting the appellant supported the said acquittal with the reasons that statutory notice allegedly served upon the appellant was not even placed on record in spite of the fact that issuance or receipt of such a notice was specifically denied by the appellant. The learned counsel would contend that issuance of notice is not denied in the case on hand and even reply notice was issued and the same can be produced before the Court since trial is not yet over. The learned counsel also vehemently contend that the judgment in the case of **Kaveri Plastics** (supra) is also not applicable to the case on hand, wherein claim is made for Rs.1 lakh, but in the notice it is mentioned as Rs.2 lakhs and it is a defective notice. But in the case on hand, no such defect and notice was issued in respect of both the cheques separately and claim is also made to the tune of Rs.1 Crore.

11. Having heard the learned counsel for the petitioner and the learned counsel for the respondent and also considering the principles laid down in the judgments referred supra, the points that would arise for the consideration of this Court are:

(i) Whether this Court can exercise the power under Section 482 of Cr.P.C. in view of non-production of one of the notice and whether such defect is curable?

(ii) What order?

Point No.(i):

12. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, the initiation of proceedings under Section 138 of NI Act is not in dispute. The initiation of proceedings against the petitioner is in respect of two cheques. The issuance of cheques is not disputed and issuance of two legal notices is also not in dispute. The petitioner also gave reply to both the notices is also not in dispute. The only contention of the learned counsel for the petitioner is that there is a fundamental defect in non-production of one of the notice. The learned counsel for the petitioner relied upon the judgment of the Apex Court in the

case of **Rahul Builders** (supra), wherein in paragraph No.10 it is held that service of a notice is imperative in character for maintaining a complaint. It creates a legal fiction and also compliance of proviso (b) to Section 138 is very clear. But in the case on hand, notice was issued, the same was served and reply was also given. Hence, as rightly pointed out by the learned counsel for the respondent, this judgment will not come to the aid of the petitioner. The judgment in the case of **Mehmood Ul Rehman** (supra) relied upon by the learned counsel for the petitioner is with regard to taking of cognizance. In the present case on hand, when the complaint was filed, notice was issued after both the cheques were bounced and notices are also served and reply was also given. The satisfaction on the ground of proceeding would mean that the facts alleged in the complaint would constitute an offence. When the material constitute an offence, merely because one of the notice is not produced, cannot be a fundamental defect as contended by the learned counsel for the respondent. There was a bouncing of cheque and there was an issuance of notice and reply was also given. Only because one of the notice was not produced, it is not a fundamental defect as contended by

the learned counsel for the respondent and document can be produced at a later stage also.

13. The judgment of the Apex Court in the case of **H.N. Jagadeesh** (supra), paragraph No.3, is very clear that when the appeal was filed, based on the acquittal, the Apex Court made an observation that while acquitting, the reason is given that statutory notice allegedly served upon the appellant was not even placed on record in spite of the fact that issuance or receipt of such a notice was specifically denied by the appellant. But in the case on hand, it has to be noted that notices were issued and the same have been served and the petitioner has given reply to both the notices. The discussion made in paragraph Nos.6 and 7 of the judgment is with regard to non-production of the same during the course of trial and hence, it was rejected. But in the case on hand, trial is not yet completed and the same can be produced. The judgment of the Apex Court in the case of **Kaveri Plastics** (supra) also not comes to the aid of the petitioner as in the said case cheque which was drawn by the respondent was for Rs.1 lakh, whereas in the notice demand was made by mentioning as Rs.2 lakhs and the said defect is not found in the case on hand. In the case on hand, there are two cheques and for two separate

cheques, two separate notices were issued claiming amount of Rs.50,00,000/- each and in the complaint also the same claim is made.

14. The learned counsel for the petitioner also relies upon the judgment of the High Court of Judicature at Madras passed in Crl.O.P.No.1377/2023 (supra), wherein it is held that even after the commencement of trial also, Section 482 of Cr.P.C. can be invoked. But in the case on hand, it has to be noted that trial has already been commenced and documents are also produced. The learned counsel for the petitioner produces the documents, deposition as well as sworn statement with regard to the non-production of notice and also the admission on the part of PW1. This Court cannot appreciate the evidence of PW1 while entertaining the petition under Section 482 of Cr.P.C. and the said scope is within the limit of the Trial Court to appreciate the same and this Court sitting under Section 482 of Cr.P.C. cannot venture to consider the admission and the same has to be considered on merits and the document can be produced during the pendency of the proceedings.

15. This Court would like to rely upon the judgment of the High Court of Madhya Pradesh at Jabalpur passed in Misc. Criminal Case No.55049/2024 dated 06.01.2025, wherein when the application was filed in a proceedings under Section 138 of the NI Act, it is held that it is essential for the complainant to prove the fact that a notice was issued under Section 138(b) of NI Act within a period of one month from the date of receipt of information of dishonour of cheque by making a demand of cheque amount and the office copy of notice is a relevant document. The document ought to have been filed along with the complaint but there is no bar in filing the same at a later stage. As the document is most relevant document, the Trial Court has not committed any illegality or irregularity in allowing the application by permitting the complainant to re-examine himself for the purpose of exhibition of document. The same is a curable defect.

16. This Court also would like to rely upon the judgment of the High Court of Kerala at Ernakulam, passed in Crl.MC.No.910/2020 (C) dated 04.12.2020, wherein an observation is made that the application filed for adducing additional evidence could be considered and in paragraph No.7 discussed that the complainant has to produce the document at

least before the commencement of examination of the witnesses. But, if there was some omission in that regard, it would not mean that the document cannot be produced subsequently. Regarding the non-mentioning of the document in the complaint and the notice, it is to be noted that in a prosecution under Section 138 of the NI Act, the complainant need not mention all facts relating to the original transaction in the complaint or notice, as if in a plaint in a suit. The High Court also discussed the provisions under Section 254(1) of the Code that, if the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The Court also taken note of prejudice that may be caused to the accused. In paragraph No.10, the High Court taken note of the judgment of the Apex Court in the case of **Rajendra Prasad v. Narcotic Cell** reported in **AIR 1999 SC 2292**, wherein an observation is made invoking Section 311 of the Code and also Section 165 of the Evidence Act. Having extracted the said paragraph, in paragraph No.11 made an observation that the case of the complainant is not based on

this document, but it is based on the dishonoured cheque. Therefore, it cannot be found that the attempt of the complainant in producing and proving the document amounts to an attempt to fill up the lacuna in his case.

17. But in the case on hand, non-production of legal notice is a curable defect. Hence, the contention of the learned counsel for the petitioner that this Court can quash the proceedings under Section 482 of Cr.P.C. even after commencement of trial, cannot be accepted and the relevant document can be produced even at the later stage, if it is explained by the complainant. The contention of the learned counsel for the petitioner that intentionally suppressed the facts, could be considered at the time of considering the matter on merits and not at this stage.

18. This Court also would like to rely upon the judgment of the Apex Court passed in SLP (Crl.) No.14258/2024 dated 07.03.2025, wherein the appellant was permitted to produce photocopies of the alleged memo of cheque and the legal notice, subject to payment of costs of Rs.25,000/- to be paid to respondent No.2. Hence, it is very

clear that the same is not a fundamental defect as contended by the counsel according to the petitioner.

19. This Court also would like to rely upon the judgment of the Apex Court passed in Special Leave to Appeal (Crl.) No.2636-2637/2001, dated 05.10.2001, wherein the Apex Court allowed the parties to produce the document of postal receipt to prove the factum of issuance of notice at later stage. In the case on hand, it is a clear case of issuance of cheques and the same are bounced and legal notices were issued and the same was served and reply was also given. Under the circumstances, non-production of one of the legal notice is not a fundamental defect. Hence, I answer point No.(i) accordingly.

Point No.(ii):

20. In view of the discussion made above, I pass the following:

ORDER

The petition is dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

MD