

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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CRM-M No. 37055 of 2012

Date of decision: 31.3.2014

M/s Hi Choice Exports Private Limited and another ..Petitioners

Versus

M/s Public Clothing Private Limited ..Respondent

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Ashwani Gaur, Advocate
for the petitioners
Mr. A.K.Goyal, Advocate
for the respondent.

Mahavir S.Chauhan, J.(Oral)

Petitioners owed to the respondent a loan of Rs. One lac and in discharge of that liability, they issued a cheque bearing No. 852102 dated 30.12.2009 for Rs. One lakh drawn at Punjab National Bank, Jaipur, in favour of respondent-Company. The cheque however, was not encashed by the banker of the petitioners due to insufficient funds and, accordingly, respondent-Company issued legal notice dated 29.1.2010 (Annexure P1) calling upon the petitioners to return the loan amount.

Responding to the aforesaid notice, petitioners sent reply dated 13.2.2010 (Annexure P2) along with a demand draft for Rs.

One lakh. Copy of the demand draft is available on record as Annexure P3. The reply sent (through registered post) vide postal receipt (Annexure P4) was duly served upon the respondent as evidenced by the acknowledgment (Annexure P5). Thereafter, petitioners approached their bankers to know the status of the demand draft and vide memorandum (Annexure P6), they were informed that the demand draft stood encashed by the respondent. In spite of this all, respondent filed Criminal Complaint (Annexure P7) under Section 138 of the Negotiable Instruments Act, 1881, (for short, "the Act") whereupon, petitioners were summoned to face trial under Section 138 of the Act, vide order dated 15.3.2010 (Annexure P8).

To challenge the summoning order (Annexure P8) as also the complaint (Annexure P7), petitioners have filed the instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.").

Respondent is contesting the petition and has filed reply.

I have heard learned counsel for the parties and have also perused the record.

Learned counsel for the petitioners has forcefully argued that continuation of the criminal complaint and allowing the summoning order to sustain, would be an abuse of process of law because the respondent has filed the complaint after receipt of the loan amount and has concealed from the Court, the factum of return of the loan amount by the petitioners to him. This is controverted by the respondent and it is stated that the amount of demand draft

was adjusted towards some other running account of the petitioner and it did not pertain to the transaction under adjudication in the present proceedings.

Nothing more has been urged on either side.

Ordinarily, the petitioner would have been relegated to their remedy of revision under Section 397 Cr.P.C. before the Court of Session because order dated 15.3.2010, is amenable to revisional jurisdiction of that Court but the circumstances as narrated on behalf of the petitioners cannot be gone into by the learned Sessions Judge while exercising his revisional jurisdiction, because these documents are yet to be proved. However, learned counsel for the respondent has not been able to controvert the submission put up on behalf of the petitioners as regards sending of notice (Annexure P1) by the respondent to the petitioners, receipt of demand draft and its acknowledgment by the respondent. Though it is submitted by the learned counsel that the reply (Annexure P2) was not received by the respondent, but it sounds incredible that the respondent did receive the demand draft which was appended with the reply (Annexure P2) but did not receive the reply. Therefore, the contention seems to be a concoction and is, thus, rejected.

It is also quite surprising and astonishing that the respondent has come out with a plea that the amount of demand draft (Annexure P3) was adjusted towards some other running account of the petitioners, but has chosen not to make a mention of that running account in the complaint (Annexure P7) filed before the

learned trial Magistrate. Even during the course of hearing, learned counsel for the respondent has not been able to show any documentary evidence with regard to the so called other running account of the petitioner against which the amount of demand draft (Annexure P3) was allegedly adjusted.

It also needs to be mentioned that in similar circumstances, other complaints and summoning orders have already been quashed by different Benches of this Court vide orders dated 4.10.2013 passed in Criminal Misc. No. 37053 of 2012 and Criminal Misc. No. 37054 of 2012 between the same parties.

In this view of the situation, it cannot be accepted that the demand draft (Annexure P3) was meant for adjustment towards any other account of the petitioners running with the respondent. Rather, the conduct exhibited by the respondent reminds of a saying that for some people courts are play grounds wherein they can play games of their choice and in the manner they like. Such a tendency, however, deserves to be curbed and discouraged strongly.

In view of failure of the respondent to show any documentary evidence entitling it to adjust the amount of demand draft (Annexure P3) and its conduct exhibited by it in denying even receipt of the reply (Annexure P2), the petition is accepted, the complaint (Annexure P7) as also the summoning order (Annexure P8) are hereby quashed.

March 31,2014
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(MAHAVIR S.CHAUHAN)
JUDGE