

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-20850 of 2015

Date of Decision: July 01, 2015

Manish Kumar and anotherPetitioners

Versus

Lucky KumarRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.MS Uppal, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint titled 'Lucky Kumar, Sole Proprietor of M/s Aggarwal Khad Store, Bhikhi, Tehsil and District Mansa v. Manish Kumar, Sole Proprietor of M/s Manish and Company, Bhikhi, Tehsil and District Mansa and another', Annexure P1, filed under Section 138 of the Negotiable Instruments Act (for short 'the Act') as also the summoning order dated 8.9.2014 at Annexure P2 and all subsequent proceedings arising therefrom.

2. Brief facts of the case are that a complaint was filed by the complainant-respondent against the petitioners under Section 138 of the Act with the averments that Manish Kumar and Company had purchased 'Narma' on credit from the complainant on different dates. Towards re-paying an enforceable debt,

cheque bearing No.028612 dated 30.6.2014 for ₹1,63,300/- in the name of the firm of the complainant was issued and which was signed by Vinod Kumar, respondent No.2 and at the instance of Manish Kumar, respondent No.1 in the presence of the complainant. Such cheque was stated to be drawn on HDFC Bank, Branch Bhikhi pertaining to Bank Account No.14267960000648. The cheque was presented on 2.7.2014 for clearing through Oriental Bank of Commerce, Branch Bhikhi. Cheque of the accused was dishonoured by the Bank vide memo dated 2.7.2014 on the reasons - "funds insufficient". The complainant got issued a legal notice dated 8.7.2014 through registered AD post upon the accused. The registered notice was not received by the accused and was received back with a postal endorsement. The accused having failed to make the payment of the amount in question within the specified period of 15 days led to the filing of the complaint. Taking cognizance of the matter and after considering the preliminary evidence, the learned trial Court vide order dated 8.9.2014, Annexure P2, has summoned the present petitioners. Hence, the present petition.

3. Learned counsel appearing for the petitioners would contend that the false complaint has been lodged by the complainant/respondent and the summoning order has been passed in a routine and mechanical fashion, and perusal thereof would reveal that there has been no application of mind inasmuch as it is not a detailed order. That apart, it has been argued that the present petitioners were not the owners/proprietors of the firm i.e. Manish and Company on the date the cheque was issued

on account of the fact that on 1.10.2013, petitioner No.1 had sold the firm M/s Manish and Company to Sunil Kumar along with all its liabilities and, accordingly, it was Sunil Kumar who had issued the cheque in question for ₹1,63,300/-. Further submission raised is that petitioner No.2, namely, Vinod Kumar was only an authorized signatory of the firm and not the owner or the proprietor of the firm and as such, he could not be held responsible for the affairs of the firm in question.

4. Having heard learned counsel for the petitioners at length and having perused the case paper book, this Court is of the considered view that no basis for interference is made out.

5. It is a well settled legal proposition that at the time of summoning, the Magistrate has to, prima facie, form an opinion that there is sufficient ground for proceeding against the accused under Section 138 of the Act. In the facts of the present case, the trial Court has duly considered the preliminary evidence in the correct perspective and has adverted to the affidavit, Exhibit CW1/A, i.e. the affidavit furnished by the complainant upon appearing in the Court, the cheque in question dated 30.6.2014, the memo dated 2.7.2014 issued by the Bank as regards 'insufficient funds' on account of which the cheque was dishonoured as also the legal notice dated 8.7.2014 which had been got issued by the complainant upon the accused (petitioners herein).

6. The contentions raised on behalf of the petitioners would be issues to be taken up during the course of trial.

7. Furthermore, at the stage of summoning, the

Magistrate is not required to pass a detailed order in such regard. The reference may be made to the observations made by Hon'ble the Supreme Court in **U.P.Pollution Control Board v. M/s Mohan Meakins Ltd. and others**, 2000(2) RCR (Criminal) 421, which were in the following terms:

“6. In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons vide Kanti Bhadra Shah v. State of West Bengal, 2000(1) RCR(Crl.) 407 : 2000(1) SCC 722. The following passage will be apposite in this context:

“If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work ? The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all (sic) causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snailpaced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We

can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages of the trial."

8. In view of the reasons recorded above and without making any observations on merits, lest it may prejudice the case of either side during the course of trial, the present petition is dismissed.

9. Petition dismissed.

July 01, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)