IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Misc. No.M-28163 of 2011
Date of Decision: 25.02.2015

M/s Lifelong Meditech Limited and others ....Petitioners

Versus

Harpreet Singh, Proprietor M/s B.J.S. Pharmaceuticals ....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspapers may be allowed to see the judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Mr. Sanjay Kaushal,Sr. Advocate
with Mr. Arjun Shukla, Advocate
for the petitioners.

Mr. Vikram Chaudhary, Sr. Advocate
with Ms. Isha Goyal, Advocate
for the respondent.

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DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C for quashing of criminal complaint No.244/1 dated 16.02.2011 filed under Sections 406, 420, 465, 467, 468, 471 read with Section 120-B/34 IPC as well as summoning order dated 10.06.2011 passed by Judicial Magistrate Ist Class, Ludhiana and other proceedings arising therefrom.

Learned counsel for the petitioners submits that the present complaint is a counter-blast of the complaint filed by the petitioners' Company against respondent before Commissioner of Police, Ludhiana. He further submits that in that complaint, it was clearly mentioned that the petitioners' Company is apprehending that respondent may file a baseless complaint against the Company just to put a pressure upon the Company to avoid the complaint filed by them. Learned counsel also submits that the petitioners' Company presented a cheque before the bank, which was returned as dishonoured. Petitioners' Company also terminated the Consignee agreement of the respondent dated 01.07.2008 and asked them to clear the entire outstanding amount at the earliest. An assurance was given by the respondent to present the cheque again but still it was dishonoured with remarks "Payment stopped by Drawer'". It is also the argument of learned counsel for the petitioners that both respondent and one Mr. Askari, in connivance with each other, were trying to deceive the petitioners' Company by filing false documents and because of this reason, a complaint was filed by them before the Deputy Commissioner of Police, South District, New Delhi. An inquiry was conducted and thereafter, FIR No.29 dated 11..02.2011 was registered at Police Station Economic Offences Wing, New Delhi. In the investigation, respondent was also found to be involved. Learned counsel also submits that a complaint under Section 138 of the Negotiable Instruments Act is also pending against the respondent.

Learned counsel for the respondent submits that the disputed questions of facts are there and the same cannot be decided in petition filed under Section 482 Cr.P.C and an alternative remedy is there not only for moving an application for discharge before the trial Court but also, all pleas raised in this petition can be raised before the trial Court at an appropriate stage. Learned counsel also submits that the respondent had led preliminary evidence and the petitioners have been summoned but in spite of passing of the summoning order, the petitioners have not joined the proceedings and as such, they are not entitled to invoke extraordinary jurisdiction of this Court under Section 482 Cr.P.C. Learned counsel further submits that the respondent is also a victim at the hands of petitioners'

Company and has also brought to the notice of this Court a letter dated 02.06.2009 (Exhibit C-7), wherein, it has been acknowledged that the petitioners' Company has received blank cheque of State Bank of Patiala, Ludhiana, as security. Similarly, in letter dated 20.05.2010, it has been confirmed by the petitioners' Company that all details of the records were checked in detail and it was found that there is no outstanding balance as per their statement till April 30th 2010.

Heard the arguments of learned counsel for the parties and have also perused the file.

The complaint and summoning order have been challenged by the petitioners' Company merely on the ground that earlier a complaint was filed against the respondent at the instance of petitioners' Company and subsequently, just a counter blast to that complaint, the present complaint has been filed. It is also alleged that there is connivance of one Askari and respondent, who are facing complaint filed at the instance of petitioners' Company.

Admittedly, the present petition has been filed for quashing of said complaint as well as summoning order. The summoning order has been passed on the basis of preliminary evidence recorded by the trial Court. The petitioners have not joined the Court proceedings so far and without joining the Court proceedings, at the initial stage, the present petition has been filed under Section 482 Cr.P.C only on the ground that the accused petitioners have been implicated because of one complaint pending against the respondent. The disputed questions of facts have been raised by the petitioners, which are subject matter of trial and the same can be considered during trial. Although, some of the documents have been placed on record by both the parties which cannot be considered as evidence without being tested and proved, hence, the same have to be considered by the trial Court. The complaint has been filed against Mr. S.M. Askari, who was working as a General Manager (Sales) and was authorized representative of the petitioners' firm to enter into transactions with the respondent. As per documents placed on record, it appears that both the parties have agreed that the respondent would hand over two blank signed cheques, which would be considered as security. Those cheques have been acknowledged being the security cheques. Certain allegations are also there regarding criminal breach of trust, cheating, forgery and fabrication of valuable documents, which can be proved during trial. At the time of issuing summons, only a *prima facie* case is to be seen and in case, the Court is satisfied that sufficient grounds are there to proceed with the complaint, the accused are summoned. Moreover, the summoning order has been passed by stating that on the basis of preliminary evidence, the offence under Sections 420/465 IPC is made out.

Certain guidelines have been laid down in the judgment of Hon'ble the Apex Court in ***State of Haryana and others vs Ch. Bhajan Lal and others 1991(1) RCR (Criminal) 383***, which are reproduced as under :-

> "(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the ac- cused;
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> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
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> (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in

support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

On perusal of these guidelines, no case has been made out as disputed questions of facts are involved, which can be tested/proved during trial.

Accordingly, the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

25.02.2015
gurpreet