

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 44212 of 2014(O&M)
Date of Decision: December 14, 2015

M/s M. B. Metal Industries

.... Petitioner

vs.

M/s Vijay Impex

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Parteek Pandit, Advocate
for the petitioner.

Mr. R. S. Bajaj, Advocate
for the respondent.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?Yes*
2. *To be referred to the Reporters or not?Yes*
3. *Whether the judgment should be reported in the Digest?Yes*

Kuldip Singh J.(Oral)

Petitioner seeks quashing of complaint No.
Nact/33485/2013 dated 23.05.2013 (Annexure P-1) titled as "M/s
Vijay Impex Vs. M/s M.B. Metal Industries" filed under Section 138 of

Negotiable Instruments Act, 1881 (for short the Act) pending in the Court of learned Judicial Magistrate Ist Class, Jalandhar along with all subsequent proceedings including summoning order dated 26.07.2013(Annexure P-2) passed by the trial Court under the Act.

The background of case is that respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before Judicial Magistrate Ist Class, Jalandhar alleging that in order to discharge the liability accused(the present petitioner) had issued a cheque bearing No.127042 dated 04.02.2013 for Rs.8,46,428 on 04.02.2013. Before the due date of the cheque, a sum of Rs. 3,97,000/- was paid by the accused through transfer and the balance outstanding amount was Rs. 4,49,428/-. The balance payment was not made. Plaintiff presented the cheque to the bank which was dishonoured on 15.04.2013 with the remarks "insufficient funds". Thereafter after serving the legal notice the complaint was filed. After recording preliminary evidence the learned Judicial Magistrate Ist Class, Jalandhar vide impugned order Annexure P-2 summoned the accused under Section the Act to face trial.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that admittedly out of cheque amount of Rs. 8,46,426/- a part payment of Rs. 3,97,000/- was made and in this way due amount was Rs.4,49,428/-. However the cheque was

presented to the bank for the entire amount and was dishonoured with the remarks “insufficient funds”.

Learned counsel for the respondent has argued that since the balance payment was not made, the respondent had no option but to present the cheque to the bank. Section 56 of the Negotiable Instruments Act provides as under:-

“56. Indorsement for part of sum due-No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.”

It is not the case of the complainant that such endorsement was made on the Negotiable Instrument and only the balance amount was claimed from the bank. The bank after looking into the amount mentioned in the cheque reported that funds are insufficient. Therefore, once the part payment of the cheque is made then the cheque should have been presented with the endorsement under Section 56 of the Act. If the cheque was presented for the entire amount and it was dishonoured then in my view, it does not make out the offence under the Act.

Accordingly, the present complaint is nothing but misuse of process of Court and is accordingly quashed.

The present petition stands allowed.

December 14, 2015

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(KULDIP SINGH)
JUDGE