

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM No.M-5485 of 2015**

Date of decision:- April 23, 2015

**AB Builders and another**

**.....Petitioners...**

**Vs.**

**Raju Construction through its proprietor Raj Kumar**

**....Respondent...**

**CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH**

Present:- Mr. Rakesh Nehra, Advocate,  
for the petitioners.

\*\*\*\*

**JASPAL SINGH, J.**

This petition has been preferred under Section 482 Cr.P.C. by AB Builders and another for quashing criminal complaint No. RBT-123/20.02.2014 captioned as ***“Raju Construction vs. AB Builders and another”*** pending in the Court of Id. SDJM, Bahadurgarh as well as impugned summoning order dated March 21, 2014, passed by Id. SDJM, Bahadurgarh (Annexure P-2) whereby Id. SDJM has summoned petitioners to face trial under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, “Act” only) and to quash all subsequent proceedings arising thereto.

2. Assailing impugned order as well as complaint, it has been ebulliently argued by learned counsel for petitioners that though a sum of ₹1.50 lacs was taken as loan from respondent-complainant but said amount has already been repaid to respondent, much prior to filing of complaint before Id. Magistrate. A sum of ₹1 lac was

deposited in the bank account of respondent i.e. Punjab National Bank, branch Bahadurgarh on June 19, 2013 and a sum of ₹19,500/- was paid to respondent vide voucher dated July 20, 2013. Similarly, a sum of ₹15,500/- and ₹15,000/- were paid on August 08, 2013 and August 25, 2013, respectively vide vouchers duly signed by respondent. It has further been urged by learned counsel for petitioners that Id. trial court has gravely erred while not considering the fact that there was a cutting and overwriting on date on the cheque in question, which has been malafidely manipulated/forged by respondent. Complainant-respondent had assured petitioners to return the cheque but subsequently, refused to return the same with mala fide intention. In the given circumstances, impugned order whereby petitioners have been summoned to face trial, is absolutely uncalled for.

3. While concluding his arguments, it has been contended by learned counsel for petitioners that since there has been no liability to discharge after the payment of amount in question on different dates, complaint is not legally maintainable. Thus, complaint as well as subsequent proceedings initiated upon it, deserve to be quashed.

4. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for petitioners but find the same to be without any legal or factual substance.

5. By now, it is pretty settled that power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases. Moreover,

complaint or proceedings can only be quashed where allegations in the complaint, do not disclose an offence and/or that un-controverted allegations made in complaint or FIR and evidence collected in support thereof, do not disclose commission of any offence and make out a case against accused.

6. The main stress of learned counsel for petitioners is that amount of cheque in question has already been repaid to respondent-complainant on different dates but there is nothing on record to suggest that why cheque was not received back. Even notice, prior to lodging of complaint under the Act was also issued/served, which did not fetch any reply. It is also a matter of evidence, whether amount, if any, has been paid to respondent-complainant is qua cheque in question. Such evidence can only be adduced before Id. trial court during the course of evidence. Moreover, contentions raised in this petition are simply a defence to be taken by petitioners before trial court. It cannot be said that allegations contained in complaint coupled with preliminary evidence, do not disclose commission of any offence, so as to quash complaint or subsequent proceedings.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such the same is dismissed.

April 23, 2015  
sonika

**(JASPAL SINGH)**  
**JUDGE**