

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

CRM-M No.35675 of 2011 (O&M)

Date of decision: 28th July, 2016

M/s Dimple Audio Video (P) Ltd. and another

... Petitioners

Versus

Tejinder Pal Singh Bindra

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rakesh Bhatia, Advocate
for the petitioners.

None for the respondent.

FATEH DEEP SINGH, J.

This petition under Section 482 Cr.P.C. seeking invocation of the exercise of inherent powers of this Court has been preferred by petitioners M/s Dimple Audio Video (P) Ltd. as well as its Managing Director Gurmit Singh Sehgal against respondent/complainant Tejinder Pal Singh Bindra wherein they have sought quashing of the complaint (Annexure P6) dated 22.09.2008 as well as summoning order (Annexure P7) dated 01.11.2008 and an order passed in criminal revision (Annexure P8) by the Court of learned Additional Sessions Judge, Ludhiana which is also to the similar effect.

The precise grounds on which the petitioner has rested his claim are that the complainant had procured the summoning order

against the petitioners by misusing his cheque in connivance with one Mr. Deenanath Chhabra to whom it was given in the year 2003 and regarding which, payment has already been stopped and FIR has been lodged against the respondent. Averring that none of the ingredients under Section 138 of the Negotiable Instruments Act, 1881 were ever attracted to the present complaint for the allegations enshrined therein.

Heard Mr. Rakesh Bhatia, Advocate for the petitioners and perused the records of the case.

The undisputed facts of the complainant side are over cheque No.224932 dated 24.05.2009 for a sum of Rs.40,000/- drawn on Rupee Cooperative Bank, Camp Branch, Pune which is proved on the record as Ex.C1 and the claim of the complainant is that he and the accused petitioners were having friendly relations and that the accused has taken a friendly loan for the improvement of his business and thus, in acknowledgement of this outstanding legal liability had issued a cheque promising that it was good for encashment, but on due presentation the same was dishonoured on account of insufficiency of funds. It is the stand of the complainant that after adopting due process and upon commission of offence had led to filing of the present complaint.

Appreciating the arguments, what has been sought to be put forth as the lone contention by learned counsel for the petitioners/accused is that the date/wording on the cheque Ex.C1 has

been subsequently changed by fraudulent incorporation/overwriting and so its amount.

Appreciating the arguments of the petitioners side, as none has come present to oppose the same on behalf of the complainant, though without going into the very angle as to the territorial jurisdiction of the Court which is not the subject matter of assailment, Hon'ble the Supreme Court of India in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, has comprehensively discussed the powers of the High Courts in exercise of their jurisdiction under Section 482 Cr.P.C. and excerpts thereof are reproduced below to lay emphasis:

- (1) 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 accused;
- (2) 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;
- (3) 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;

- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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.

It is also well enunciated principle of law that in the exercise of powers under Section 482 Cr.P.C. the High Courts are not supposed to appreciate evidence. Reliance placed on '**Umesh Kumar v. State of Andhra Pradesh**' 2013 SCALE (11) page 28, and '**M/s Zandu Pharmaceutical Works Ltd. v. MD Sharaful Haque and another**' 2004(4) RCR (Criminal) 937. Undisputedly, the powers of this Court cannot be invoked contrary to the settled proposition of law. The contentions that there has been interpolation/overwriting on the cheque is subject matter of primary dispute so raised before this Court and which can only be adjudicated by leading evidence by the defence side, i.e. the present petitioners, by examining experts, if any, into the field or by the testimony of the petitioners/accused to that effect. It is prerogative of the trial Court to appreciate the evidence to that effect and to come to a comprehensive judicious decision qua these allegations and which cannot be merely adjudicated upon by exercise of powers under Section 482 Cr.P.C. by this Court. Apparently, the figures of the amount i.e. Rs.40,000/- in words as well as digits tally and nothing discernible can be made out from the date on the cheque or any other wording thereon to the naked eye. If, as is so argued, there is any decipherable anomaly which materially affects the outcome of the case then it can be only and only resolved by means of evidence which may be by some expert as well so per the requirements of the parties to this lis or as the Court may deem fit in the exercise of its powers during the trial.

No doubt, even if the petitioner has missed such an evidence at the trial, it can resort to the provisions of Section 311 Cr.P.C. which gives unbridled powers to the Court to re-call and re-examine any such evidence or person, if so necessitated in the interests of justice.

Though at this juncture during the course of arguments, learned counsel for the petitioners has sought indulgence of this Court for compounding the offence as he has shown his willingness to deposit the amount, is a relief which the petitioner can seek to claim even before the trial Court for compounding the offence in accordance with law if so advised.

In view of the foregoing discussions detailed and discussed above, the instant petition thus stands dismissed and disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

July 28, 2016
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No