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

Sr. No. 150

CRM No.M-32365 of 2016
Date of decision: *September 14, 2016*

M/s Vaaan Infra Pvt. Ltd. & Ors.

.... Petitioners

Versus

State of Punjab & Anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek Chauhan, Advocate,
for the petitioners.

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JASPAL SINGH, J.

The instant petition has been preferred by the petitioners under Section 482 Cr.P.C. for quashing of summoning order dated September 03, 2015 and all subsequent proceedings arising from complaint No.5759/2015 registered on September 03, 2015 filed under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 (for short NI Act).

2. The instant complaint has been preferred by respondent No.2- M/s I-Tek Logics Pvt. Ltd. (for short respondent-company) against the petitioners stating that complainant is a private limited company run by its

Directors having its Head Office at 91, Phase-I, Urban Estate, Dugri, Ludhiana and Branch Office at 508, Eros Apartment, 5th Floor, Building No.56, Nehru Place, New Delhi in the meeting of Board of Directors held on July 25, 2015. It was resolved that Mr. Ajay Guleria, Accounts Head of the company was authorized to initiate and proceed further with petitioner No.1-company. He was further authorized to file a complaint under Section 138 of NI Act and to engage an Advocate for filing a complaint. He was also authorized to file all relevant documents pertaining to this case. Complainant alleged that petitioner Nos.2 & 3 on behalf of accused No.1 purchased some articles from the complainant for an amount of ₹ 33,16,477/- on credit basis. In order to discharge their liability towards the complainant, the accused issued a cheque bearing No.000039 dated April 04, 2015 for ₹ 33,16,477/- drawn on HDFC Bank, Charmwood Bazar, Charmwood Village, Suraj Kund Road, Faridabad in favour of the complainant. The aforesaid cheque on presentation with complainant's banker i.e. ICICI Bank Ltd., Dugri Road, Ludhiana was returned as dishonoured by the banker of the accused vide Memo dated July 02, 2015 with the remarks “Payment Stopped by Drawer”. In this way, the accused have cheated the complainant and committed an offence punishable under Section 138 read with Section 142 of NI Act. A legal notice dated July 31, 2015 was served upon the accused by the complainant calling upon them to make the payment of cheque in question.

3. Learned counsel for the petitioner has submitted that petitioner No.1 is a private limited company. Petitioner Nos.2 & 3 are the Managing

Director and Director respectively of petitioner No.1-company. The petitioners had submitted reply dated August 20, 2015 to the legal notice dated July 31, 2015, wherein issuance of the above said cheque was admitted. It was submitted that the petitioners were supposed to receive the payment from their clients i.e. Indian Highway Management Company Ltd. which was delayed due to unforeseen reasons. Subsequent to the dishonour of aforesaid cheque, the petitioners had made a payment of ₹18,32,048/- on different dates (₹32,048/- on July 01, 2015, ₹8,00,000/- on July 22, 2015 and ₹10,00,000/- on August 19, 2015) towards the liability of the dishonoured cheque. Thus, the outstanding dues as per the books of account of petitioner-company, at the time of submitting its reply to the legal notice was to the tune of ₹14,84,429/-. Thus, an amount of ₹18,32,048/- already stood paid to the respondent-company even prior to filing of the complaint. The petitioners had further paid an amount of ₹10 lacs to respondent-company on September 02, 2015. Thus, the total amount due on the part of the petitioners on the date of filing of the complaint was ₹4,84,429/-. Moreover, the said amount of ₹4,84,429/- was also paid by the petitioners to the respondent-company on November 10, 2015. Learned counsel further submits that no such offence as alleged against the petitioners is made out. There is no such averment in the complaint that petitioner Nos.2 & 3 are responsible for the management and day to day affairs of petitioner No.1-company. It is a fit case for intervention of this court and thereby quashing the present complaint against the petitioners along with all consequential proceedings. Learned counsel further contended that petitioner No.3 has been dragged in the complaint by respondent-company being the Director of petitioner No.1-company. The cheque in dispute was neither signed by the petitioner No.3 nor she has been stated to be authorized signatory of petitioner No.1-company. The basis for launching prosecution under Section 138 of NI Act against petitioner No.2 is that he is alleged signatory of the cheque in question. There is nothing on record to suggest that petitioner No.2 was under some legal debt recoverable by respondent-company. There is no allegation by the respondent-company that petitioner Nos.2 & 3 were in charge and were responsible to the company for the conduct of the business of the company. An amount of approximately ₹ 29 lacs out of due amount in the cheque in dispute already stood paid to the respondent on the date of filing of he complaint. Thus, learned counsel has submitted that lodging of complaint and passing of impugned summoning order as well as consequent proceedings are nothing but an abuse of process of law and the same deserves to be quashed.

4. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioners and perused the record available on file.

5. The scope of power under Section 482 Cr.P.C. came up for consideration before the Hon"ble Apex Court in Nagawwa v. Veeranna Shivalingappa Kanjalgi, (1976) 3 SCC 736 wherein, it was observed that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately

end in conviction of the accused. The Apex Court also culled out certain guidelines as to in what circumstances the order passed by the Magistrate issuing process against the accused can be quashed. The Hon'ble Apex Court pointed out the following circumstances:-

> *"(i) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
>
> *(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
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> *(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."*

6. Similarly, in State of Haryana vs. Bhajan Lal, 1992 SCC (Cri.) 426, apart from reiterating the earlier conclusion laid down by the Hon"ble Apex Court, it was further explained that such power could be exercised where the allegations made in the FIR/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.

7. It is also equally settled that while entertaining petition under

Section 482 Cr.P.C., materials furnished by the defence cannot be looked into and can be entertained only at the time of trial. Further, when there are prima facie materials available against the accused, a petition for quashing criminal proceedings cannot be entertained and is not maintainable. The Court should have the freedom to go into the whole gamut of allegations and to reach a conclusion on its own. To buttress this observation, we can have the reference of pronouncement of Hon"ble Supreme Court captioned as Ravindra Kumar Madhanlal Goenka & another vs. Rugmini Ram Raghav Spinners Private Limited,(2009) 11 SCC 529.

8. Now, in the light of aforesaid settled principles, it is to be seen whether there is any scope of interference in the summoning order passed by the Magistrate.

9. As far as the payment of due amount paid by the petitioners to the respondent-company on different dates, is a matter of evidence and can be just a defence put-forth by the petitioners which cannot be entertained at this stage. At the time of passing the summoning order, only allegations contained in the complaint and preliminary evidence adduced by the complainant to establish the same are to be taken into consideration and if the complaint as well as the impugned summoning order are scrutinized, these clearly spell out the allegations and averments which prima facie constitute an offence under Section 138 of the NI Act. As such, no infirmity or illegality can be attached to the summoning order to meddle with the same. The case of the petitioner does not fall within parameters which have been laid down for quashing the complaint or summoning order. Rather, this Court is of the considered view that summoning order is absolutely in

consonance with the evidence available on file and the settled canons of law.

10. In the light of what has been discussed above, this Court does not find any merit in both the petitions and as such, same are dismissed.

September 14, 2016 **(JASPAL SINGH)**
Avin/Ankur **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**