

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-4999 of 2016

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Date of decision:11.2.2016

M/s Smith Forge Pvt. Ltd. and another

...Petitioners

v.

M/s Bhushan Power & Steel Limited

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vikram Bali, Advocate for the petitioners.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed under Section 482 Cr.P.C. for quashing the order dated 3.12.2015 (Annexure-P.4) passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby the application for dismissal of the complaint No.108511 of 2011 (Annexure-P.1) was dismissed. It has also been prayed that the complaint may also be quashed.

I have heard learned counsel for the petitioners and have gone through the record.

From the record, I find that M/s Bhushan Power & Steel Limited-complainant (respondent herein) filed complaint against M/s Smith Forge Pvt. Ltd. and Rakesh Sharma-accused (petitioners herein) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881

(hereinafter referred to as 'the NI Act'). It is stated in the application that the present petitioners in order to avoid litigation are ready to pay cheque amount of ₹2.5 Lakhs. It is admitted at the time of arguments that no amount was paid on the basis of legal notice given by the complainant nor any amount was paid within 15 days etc. after appearing in the Court. Rather, at this stage, the accused filed the application that they are ready to pay the cheque amount. The complainant has contested this application and has refused to receive the cheque amount.

The learned Judicial Magistrate Ist Class, Chandigarh, vide order dated 3.12.2015 dismissed the application. The offence under Section 138 of the NI Act is compoundable offence, but, at the same time, it is settled law that compounding of the offence can only be with the consent of both the parties. If the complainant is not agreeing to the compromise, then there can be no compounding.

Learned counsel for the petitioners relied upon the law laid down by this Court in Subhash Chander Makkar v. Surinder Singh Bedi, 2014(1) R.C.R. (Cr.) 719. I have gone through this judgment. As per this judgment the amount has already been paid to the complainant and some of the amount has been paid as per the order passed by this Court. In these circumstances, the complaint was quashed, which are not the facts in the present case. Therefore, the impugned order passed by the learned Judicial Magistrate Ist Class is correct as per law and does not require any interference from this Court. No illegality has been committed by the learned Magistrate while passing the impugned order.

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Further more, the petitioners have also asked for the relief of quashing of the complaint only on the basis of this offer of payment of the cheque amount. On this ground, the complaint cannot be quashed.

Therefore, finding no merit in this petition, the same is dismissed.

February 11, 2016.

(Inderjit Singh)
Judge

hsp