**In the High Court of Punjab and Haryana, at Chandigarh**

**Criminal Misc. No. M-14522 of 2017**

**Date of Decision: 08.11.2017**

M/s Madhyam Estate Linkers Private Limited and Others

... Petitioner(s)

Versus

Pavan Datta

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. R.S.Rai, Senior Advocate
with Mr. T.S.Khaira, Advocate
for the petitioner(s).

Mr. Dhananjay Singh, Advocate
for the respondent.

**Shekher Dhawan, J.**

Present petition under Section 482 Cr.P.C. for seeking quashing of criminal complaint bearing No. 10076 dated 24.8.2016, under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"); setting aside of summoning order dated 24.8.2016, passed by the learned Judicial Magistrate Ist Class, Gurugram and order dated 4.3.2017, passed by learned Additional Sessions Judge, Gurugram passed in the revision petition.

Facts relevant for the purpose of decision of the present petition that complaint under Sections 138 & 142 of the Act bearing No. 1031-AG of 2013 was filed against the present petitioners, Anuj Dang and Harsh Dutt. Anuj Dang was the director of petitioner No.1, whereas Harsh Dutt was the director of M/s Madhyam Builtech Private Limited and not petitioner No.1.

However, Harsh Dutt had resigned from the directorship of the said company on 22.7.2016. The complaint was pertaining to a cheque amounting to Rs. 48,00,000/-. The complaint was decided against the accused persons vide order dated 22.12.2014. Two appeals were preferred against the judgment of conviction and the said appeals were decided together vide single order (Annexure P4) and the convicts were acquitted in view of the compromise arrived at between the parties. The compromise dated 7.12.2015 (Annexure P5) was effected between the complainant, Anuj Dang and Harsh Dutt in their individual capacity and not as directors of petitioner No.1 herein. An amount of Rs.61,00,000/- was paid by Anuj Dang and Harsh Dutt to the complainant in terms of the compromise and a cheque amounting to Rs.70,00,000/- was paid to the complainant for some fresh transaction of three flats in Gurugram. The matter in controversy revolves around the said cheque of Rs.70,00,000/- (Annexure P6).

Learned counsel for the petitioners contended that as compromise dated 7.12.2015 was involving two clauses, firstly, payment of amount of Rs.70,00,000/- vide cheque, secondly that was for sale/transfer of three flats which were in the name of the complainant and handing over of the documents by respondent to Anuj Dang. However, the sale/transfer of the flats could not materialize.

Learned counsel for the petitioners mainly contended that the cheque in question for a sum of Rs.70,00,000/- was issued by Anuj Dang in his personal capacity from his own saving account and the same was not paid in his capacity as a director of petitioner No.1. Thus, the petitioners have no role whatsoever in the transaction and they were not party to the compromise. The complaint under Sections 138 & 142 of the Act was filed against the petitioners, Anuj Dang and Harsh Dutt. The petitioners are neither signatory of the cheque nor they have to do anything with the compromise, which is the basis of cheque. But the complaint has been filed against the company i.e. M/s Madhyam Estate Private Limited, whereas there is no company by the said name. Rather the name of company is M/s Madhyam Estate Linkers Private Limited. However, both the Courts blow failed to take into consideration all these facts and the complainant has unnecessarily and deliberately dragged the petitioners into the complaint, which is sheer misuse of the process of law and the present complaint be dismissed.

While arguing on this point, learned counsel representing the respondent submitted that liability of petitioner No.1-company had arisen out of compromise deed dated 7.12.2015. The matter in controversy before the first Appellate Court was relating to the present petitioners, the compromise in question was entered into by the parties to the dispute and was signed by Anuj Dang and Harsh Dutt and the said compromise was not in their individual capacity. All the financial transactions in respect of the said properties were made by the accused/petitioners for and on behalf of the company. The cheque in question was issued by Anuj Dang for and on behalf of all the accused, who were convicted vide judgment (Annexure P4) in the criminal appeals by the learned Additional Sessions Judge, Gurugram. Appeals were filed by all the accused including the present petitioners and they had common interest in the case and common liability towards the answering respondent. Petitioners played an active role in settlement of the previous dispute and in arriving at the compromise between the parties and the Court of competent jurisdiction has issued process against the petitioners while taking into consideration all the facts and the present petition deserves dismissal.

Having considered the submissions made by learned counsel for the parties and gone through the record, this Court is of the considered view that certain facts are not disputed that compromise dated 7.12.2015 (Annexure P5) was entered into between the parties and was reduced into writing. As per the said compromise dated 7.12.2015, the liability to pay the amount was of Anuj Dang and Harsh Dutt. The parties to the compromise were Pawan Datta son of late Sh. G.D.Datta, resident of D-5/9, IInd Floor, DLF, Phase-I, Gurgaon (first party) and Anuj Dang son of Sh. Madan Lal, resident of House No. 305, Sector 15, Faridabad and Harsh Dutt son of Sh.H.L.Dutt, resident of D-5/9, Ground Floor, DLF, Phase-I, Gurgaon (second party). As per compromise, the second party i.e. Anuj Dang and Harsh Dutt were to make payment of Rs.70,00,000/- to the first party himself and accordingly the second party had given a post dated cheque bearing No. 347742 dated 7.7.2016, drawn on Kotak Bank, Faridabad for a sum of Rs.70,00,000/-. As per the terms & conditions of the compromise, there is no liability of the present petitioners i.e. M/s Madhyam Estate Linkers Private Limited and its directors Smt. Amarjeet Dang and Gurkirat Singh. They were not signatory to the compromise and there is no question of any liability on their part. Undisputedly, the liability to pay the amount of cheque i.e. Rs.70,00,000/- was of Anuj Dang and Harsh Dutt, who are the second party to the compromise and the complaint under Sections 138 &

142 of the Act is not maintainable against the present petitioners. The present complaint under Sections 138 & 142 of the Act against the present petitioners is not maintainable and summoning order dated 24.8.2016 (Annexure P2), passed by the learned Judicial Magistrate Ist Class, Gurugram is sheer miscarriage of justice. As such, the present petition is allowed. The complaint (Annexure P1) qua the petitioners stands quashed and the summoning order dated 24.8.2016 (Annexure P2) as well as order dated 4.3.2017 (Annexure P3) qua them are set aside. However, it is made clear that the complaint and proceedings, on the basis of said complaint qua Anuj Dang and Harsh Dutt shall continue to proceed as per law.

**(Shekher Dhawan)**
**Judge**

**November 08, 2017**
"DK"

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