117.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24486-2017
Date of decision:19.07.2017

M/S ENPROCON ENTERPRISE LTD AND ANR ... Petitioners

versus

M/S APOLLO FIEGE INTEGRATED SOLUTIONS PVT LTD .... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Kanav Bansal, Advocate, for the petitioners.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of Criminal Complaint No.4726 of 2015 dated 01.09.2015 (Annexure P-1), in case titled as M/s Apollo Fiege Integrated Logistics Solutions Private Limited, filed by the respondent-complainant, for the offences under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (for short, the Act'). Prayer has also been made for quashing of the summoning order dated 06.10.2015 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Gurgaon and the revisional order dated 24.10.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Gurgaon.

Briefly stated, the respondent-complainant has filed a complaint dated 01.09.2015 under Section 138/141 of the Act. As per the complaint, petitioner No.2 (accused) approached the complainant and sought the services with respect to third party logistics/ warehousing services for business on behalf of various concerns including the accused No.1-Company (petitioner No.1) being managed by petitioner No.2 (accused No.2). The petitioner No.1 issued a cheque No.595694 dated 22.06.2015 for an amount of ₹ 25,93,590/- in favour of the respondent-complainant so as to discharge his liability. However, when the said cheque was presented to the banker of the accused, the same was received back with the remarks "payment stopped by drawer". Accordingly, as required under Section 138 of the Act, the respondent-complainant served a legal notice dated 20.07.2015 upon the petitioners, asking for the cheque amount, but despite the statutory period of 30 days, when the cheque amount was not received, the respondent-complainant filed a complaint under Section 138 read with Section 141 of the Act.

Having perused the documents placed on record that the complainant had presented the cheque in question to the banker of the accused in time and further the complainant had issued notice to the accused within 30 days from the date of receipt of communication about dishonouring of the cheque, but still the accused failed to make payment, the learned Magistrate had found sufficient ground to proceed against the accused under Section 138 of the Act and accordingly, vide order dated 06.10.2015, the petitioner-accused was summoned to face trial in the complaint.

The petitioner challenged the order of summoning dated 06.10.2015 by way of revision petition before the learned Additional Sessions Judge, Gurgaon and the same was dismissed vide order dated 24.10.2016.

It is in the aforesaid circumstances, the petitioners have filed the present petition seeking quashing of the complaint as well as the summoning order.

Learned counsel for the petitioners has argued that filing of the complaint is just to harass the petitioner. The petitioner was actually forced to issue the cheque due to unlawful conduct on the part of the respondent-complainant. Learned Magistrate has failed to appreciate that the primary responsibility is on the complainant to make specific averments, as are required under the law in the complaint, so as to make the accused vicariously liable for fastening the criminal liability. There is no presumption that every Director knows about the transaction. The learned Magistrate while passing the summoning order dated 06.10.2015, has not considered the necessary ingredients of Section 138 read with Section 141 of Act. The impugned cheque is not of the nature which are issued in the normal course of a business and the said cheque was issued under threat and undue influence and, therefore, it cannot be enforced against the petitioner.

I have heard learned counsel for the petitioners.

The issuance of cheque No.595694 dated 22.06.2015 has not been disputed and the same has been signed by the petitioner-accused. When the cheque was presented for encashment, the same was returned unpaid with the remarks “payment stopped by drawer”. Accordingly, the respondent-complainant served a legal notice under Section 138 of Act. The petitioner has raised a plea that the cheque was got issued by the complainant from the petitioner-accused by exercising 'undue influence' and the cheque was not in relation to some previous transaction between the petitioner and the respondent-complainant.

The question as to whether the complainant got issued the cheque from the petitioner by exercising undue influence or it relates to some previous transaction between the parties, is a matter of trial and, therefore, it has rightly been observed by the learned revisionary court that when the signatures on the cheque are not disputed, under Section 139 of the Act, there is a presumption that the cheque was issued in discharge of a debt or other liability, unless contrary is proved.

In view of above, this Court does not find any illegality in the orders passed by the courts below and accordingly, the petition stands dismissed.

(HARI PAL VERMA)
JUDGE

19.07.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No