

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

**CRM No.M-34956 of 2013 (O&M)
Date of Decision: April 03, 2017**

M/s Hindok Exports and others

...Petitioners

VERSUS

Raghunath Nayyar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Munisha Gandhi, Senior Advocate with
Ms.Sukhmani Kang, Advocate
for the petitioner.

Mr.P.K.Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

The petitioners have filed this petition under Section 482 Cr.P.C. against respondent Raghunath Nayyar for quashing the complaint No.13022/2012 dated 07.07.2012 under Section 138 read with Section 141 of the Negotiable Instruments Act, filed by the respondent pending in the Court of learned Judicial Magistrate Ist Class, Ludhiana and all consequential proceedings arising therefrom.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that a complaint was filed by Raghunath

Nayyar under Section 138 read with Section 141 of the Negotiable Instruments Act against the present petitioners. As per the complainant's version in the complaint, under an oral family settlement dated 01.10.2010 subsequently recorded vide a memorandum of family arrangement dated 11.10.2010 entered into and executed by accused No.2 and 3 namely Geeta Nayyar and Kamal Nayyar with and in favour of the complainant and his wife Anita Nayyar that accused No.2 and 3 had taken over the entire business, operations and control of accused No.1-firm M/s Hindok Exports and had settled that the accused shall pay ₹80,000/- per month to the complainant as rent over his share in assets of the firm. At the time of aforesaid settlement, a sum of ₹3.55 crores including an adhoc limit of ₹40 lakhs was payable and outstanding. The said liability under the aforesaid settlement had also been taken over by accused No.2 and 3 being the persons continuing with the operations, management and control of the business and affairs of M/s Hindok Exports. The overall liability of the complainant and his wife in the business and towards the bank including his guarantee to the bank was limited to ₹90 lacs. It is further stated that the parties including the accused, had submitted to the jurisdiction of the Arbitral Tribunal. The portion of the house to be sold is measuring 33' x 70' out of the front portion of the property No.432. In lieu of the selling of said part of the property, the accused were to pay a sum of ₹88 lakhs (subject to the amount awarded by the Arbitral Tribunal) to the complainant and his wife under the aforesaid settlement. Out of the aforesaid initially settled amount of ₹88 lakhs, a sum of ₹44 lakhs was payable by the accused within 1½ years from the date of agreement to sell. As per complainant version, in

a cheque for the amount of ₹44 lakhs which became due, under the memorandum to be paid by the accused to the complainant and issued cheque No.946311 for a sum of ₹44 lakhs, which on presentation for encashment, was returned back unpaid. Legal notice was issued. When the amount was not paid, then the complaint was filed.

Both the parties to the petition brought to the notice of this Court para No.6 of the Annexure P-2 memorandum of family arrangement. It is admitted fact by both the petitioners that they have issued cheque of ₹44 lakhs and handed over the same to the Arbitrator. Learned counsel for the petitioners argued that as per this memorandum of understanding, it was only a security cheque securing the compliance of the above-mentioned terms and conditions and in case of default, it was to be handed over to the petitioner whereas learned counsel for the respondent argued that this memorandum of understanding is to be read as a whole and this is a clerical mistake by writing second party instead of first party. Learned counsel for the respondent also brought to the notice of this court copy of the Award passed by the Arbitrator in which there is mention regarding selling of the property. Learned counsel for the respondent argued that as per the terms and conditions, if the amount is not paid, then the cheque was to be handed over by the Arbitrator to the complainant.

After hearing leaned counsel for the parties, I find that the parties are on dispute on these facts. Learned counsel for the petitioners states that house has not been sold whereas learned counsel for the respondent states that house has already been sold as stated in the Award.

Secondly, the parties are on dispute qua the above stated facts; whether the

or to the complainant. All these facts are to be determined by the trial Court on the basis of the evidence. It is settled law that in quashing petition, this Court cannot determine the dispute on facts which requires evidence. At this stage, in the facts and circumstances of the present case, I find that the disputed facts are to be determined by the trial Court on the basis of the evidence and there is nothing on the record to show that filing of present complaint is abuse of process of law or amounts to miscarriage of justice. Therefore, I do not find any ground to quash the criminal complaint as well as summoning order.

Resultantly, finding no merit in the present petition, the same is dismissed.

April 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No