

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-5980-2017

Date of decision: 21.08.2017

Rakesh Gupta and others

..... Petitioners

Versus

M/s Fibro Source India Pvt. Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Harit Sharma, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

1. Through this petition under Section 482 Cr.P.C., prayer has been made for quashing of Criminal Complaint No. 2693/16 dated 04.07.2016 (old Criminal Complaint No. 7892/1/2014 dated 19.05.2014) (Annexure P-2, Colly) titled as M/s Fibro Source India Pvt. Ltd. Vs. M/s S.R. Foils and Tissues Ltd., under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 and the summoning order dated 05.07.2014 (Annexure P-4, Colly), passed by the learned Judicial Magistrate Ist Class, Gurgaon.

2. Learned counsel for the petitioners while drawing attention of this Court towards legal notice Annexure P-1 urged that the same was neither given to petitioner No. 3, nor to its Directors i.e. petitioners No. 1 and 2 and, thus, the same is not a legal notice in the eyes of law. Consequently, the impugned complaint Annexure P-2, Colly. filed on the basis of aforesaid notice is not maintainable. More so, the respondent-complainant did not utter a single word in the impugned complaint that the

Directors of petitioner No. 3, were in charge or responsible for the conduct

and business of their company and, thus, the impugned complaint is liable to be dismissed. In support of his contentions, learned counsel for the petitioners has placed reliance upon a judgment in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2005(8) SCC 89.**

3. After giving my thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds that the instant petition is completely baseless and devoid of merits for the simple reason that in para No. 17 of the impugned complaint under Section 138 of the Negotiable Instruments Act, the respondent-complainant has specifically pleaded that petitioners No. 1 and 2 were in charge and responsible for the conduct of the day-to-day business, affairs, operations and activities of accused No. 1 (petitioner No. 3 herein). Thus, in view of the above specific averment made in the complaint, no benefit whatsoever can be given to the petitioners of the judgment in **S.M.S. Pharmaceuticals' case (supra).**

4. The petitioners have challenged the summoning order passed way back in the year 2014. It is not explained on the file that as to why the petitioners did not challenge the same at any point of time in the last three years before filing the instant petition. It seems that the petitioner, after awakening out of a great slumber, with mala fide intentions filed the instant petition just to delay the trial before the trial Court. The arguments qua maintainability and limitation of the impugned complaint could have been very well raised by the petitioners before the trial Court itself and for that purpose, filing of the instant petition before this Court was not a proper course for them.

5. In view of the discussion made above, the instant petition is dismissed with costs of ₹ 10,000/- to be deposited with the Haryana Legal

Services Authority, within a period of one month.

6. A copy of this order be sent to the Member Secretary, Haryana State Legal Services Authority, Panchkula, to recover the said cost, if not deposited within the stipulated time.

August 21, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No