

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision-26.04.2017

1. CRM-M-7080-2017 (O&M)

Vinod Kumar Agrawal and another ...Petitioner(s)

Vs.

Nahar Industrial Enterprises Ltd. ...Respondent(s)

2. CRM-M-7115-2017 (O&M)

Vinod Kumar Agrawal and another ...Petitioner(s)

Vs.

Nahar Industrial Enterprises Ltd. ...Respondent(s)

3. CRM-M-7170-2017 (O&M)

Vinod Kumar Agrawal and another ...Petitioner(s)

Vs.

Nahar Industrial Enterprises Ltd. ...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ankit Mangla, Advocate for the petitioner(s).

JITENDRA CHAUHAN, J.

This judgment shall dispose of aforementioned three petitions having been filed *inter alia* assailing common order dated 06.11.2013 (Annexure P-1) passed by learned Judicial Magistrate First Class, Ludhiana whereby the accused/respondent has been summoned to face trial in Criminal Complaint No.COMA/54663/2013 titled as “Nahar Industrial

Enterprises Limited Vs. International Hometex Limited and others” registered under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act').

Learned counsel for the petitioner(s) contends that the cheques in question were presented and dishonoured after the company had already been ordered to be wound up by an order passed by the High Court of Judicature at Bombay in company petition No.279 of 2009 titled as “ L & T Finance Limited Vs. International Hometex Limited” The said order was passed by Hon'ble Bombay High Court on 26.05.2010 (Annexure P-5) whereas the three cheques in question have been purportedly issued on 14.08.2013, 16.08.2013 and 16.08.2013 respectively. The factum of winding up of the company had been brought to the notice of the complainant/respondent vide statutory notice dated 23.09.2013 under Section 138 of the Act. The respondent, with a *mala fide* intention, suppressed the factum of winding up of the company in the complaint filed before the learned Judicial Magistrate.

In support of his contentions, learned counsel cites judgments passed by Hon'ble the Supreme Court in “Ashok Yeshwant Badave Vs. Surendra Madhavrao Nighojakar and another”, “Pepsi Foods Ltd and another Vs. Special Judicial Magistrate and others”, 1998 (5) SCC 749, another judgment passed by Hon'ble Delhi High Court in “Ratan Lal Garera and others Vs. State and another”, (2007) 137 DLT 313 and a judgment passed by this Court in CRM-M-36819-2013 titled as “Ranjit Sham Chougule Vs. State of Haryana”.

I have heard learned counsel for the petitioner(s) and have gone through the case file.

In this case, a similar petition bearing No.CRM-M-3493-2016 under Section 482 of the Criminal Procedure Code was filed before this Court for quashing of the complaint in question. Vide order dated 02.02.2016 (Annexure P-4), the petition was disposed of with a liberty to the petitioner(s) to approach the Lower Court for discharge and in the event of passing of any adverse order, to approach the superior Court which is reproduced as below:-

“In the present petition filed under Section 482 Cr.P.C., the petitioners seek quashing of complaint No.COMA/54663/2013, dated 06.11.2013, titled as “Nahar Industrial Enterprises Limited vs International Hometex Limited and others” filed under Section 138 of the Negotiable Instruments Act, 1881, pending in the court of Judicial Magistrate 1st Class, Ludhiana. Also impugned the summoning order dated 06.11.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana.

It comes out that as per case of the petitioners, they had put in appearance before the lower court in August 2014. If the petitioners wanted to avail the remedy of quashing, they should have moved this Court within a reasonable time. However, the petition has been filed about 1½ year after the appearance of the petitioners before the lower court.

In these circumstances, the present petition is disposed of with liberty to the petitioners to move the lower court for discharge, stating all the grounds taken in the present petition and thereafter, if adverse order is passed, then approach the superior court.”

In pursuance thereof, the petitioner(s) moved an application for discharge before the learned trial Court which stands dismissed by the learned Judicial Magistrate First Class, Ludhiana (Annexure P-2). This order is also under challenge in the present petition.

It is the case of the complainant that the accused had issued cheque No.297264 dated 14.08.2013 for a sum of Rs.10 lakh; cheque No.297265 dated 16.08.2013 for a sum of Rs. 10 lakh and cheque No.297266 dated 16.08.2013 for a sum of Rs.10 lakh, in order to discharge his liability towards the complainant. When presented for encashment, the same were received back unpaid with the remarks “funds insufficient” vide memo dated 13.09.2013. Thereafter, the complainant served notice under Section 138(b) of the Act but inspite of that the accused failed to make payment within the stipulated period of 15 days. Thus, learned summoning Court finding sufficient material to issue process against the accused passed the impugned order (Annexure P-1).

The learned counsel for the petitioner has failed to persuade this Court as to how the *prima facie* satisfaction reached by the summoning is perverse or suffer from any illegality. Rather in view of the fact that the cheque was issued much after the winding process had been completed is a strong circumstance against the petitioner and in favour of the respondents.

In view of the above, this Court does not find any ground to quash the impugned complaint or to interfere with the well reasoned orders of summoning.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

April 26, 2017
vanita

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