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

CRM-M-8358 of 2017
Date of Decision: 08.08.2017

Sh. Yogesh Sharma and another

....Petitioners

Versus

Daryab Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Varun Kumar, Advocate, for the petitioners.

<u>RAMENDRA JAIN, J.</u> (ORAL)

Through this petition under Section 482 Cr.P.C. and Article 226 of the Constitution of India, prayer has been made for quashing the complaint (Annexure P-5) under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') filed by respondent No.1.

Perusal of the contents of the petition shows that there is no necessity to summon the record of the trial Court, hence, order dated 14.03.2017 passed by a Co-ordinate Bench of this Court is recalled.

Learned counsel for the petitioners contends that the petitioners were initially Directors of M/s Creative Dreams Developers Pvt. Ltd. (hereinafter referred to as 'the Company'), which was taken over by Rakesh Sharma and Vipul Jain w.e.f. 10.09.2013 and 19.12.2013, respectively and, thus, the petitioners thereafter had no concern with its affairs. The Company had purchased 85 kanals 16 marlas of land situated in Village Bhulwana, Tehsil Hodal, District Palwal, to the extent of half share vide registered sale deed dated 24.10.2011 (Annexure P-3) for a sale consideration of ₹ 1,44,80,000/-, out of which ₹ 50,00,000/- was paid as

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earnest money to respondent No.1 in cash on 05.10.2011 against receipt and balance amount of ₹ 94,80,000/- was paid at the time of execution of sale deed. Subsequently, in the year 2012, petitioners noticed that some of the cheques and valuable documents pertaining to the Company were missing and, therefore, the petitioners lodged a DDR (Annexure P-4) to this effect. However, after the retirement of the petitioners in the year 2013, they came to know that some complaint (Annexure P-5) has been filed under Section 138 of the Act in the year 2015 by respondent No.1, taking a false plea that wrong recitals of payment of entire sale consideration was made in the sale deed by the petitioners, claiming ₹ 60,00,000/- against three cheques allegedly issued by petitioner No.2 against the sale deed, though the entire balance sale consideration of ₹ 94,80,000/- qua aforesaid sale deed (Annexure P-3) was paid to respondent No.1 on the date of execution of aforesaid sale deed. Receipts (Annexure P-2 and P-3) were voluntarily issued by respondent No.1 showing receipt of the entire sale consideration by him against sale deed (Annexure P-3) and, thus, the impugned complaint (Annexure P-5) is liable to be quashed as the same has been filed by respondent No.1 by mis-using the lost cheques of the Company.

I have given anxious consideration to the submissions made by learned counsel for the petitioners.

It is not disputed that the charge has already been framed against the petitioners in the impugned complaint (Annexure P-5). It is also not disputed that impugned sale deed (Annexure P-3) was executed and registered during the tenure of the petitioners as Directors. Hence, they, being Directors, were responsible for the entire affairs of the Company. The stand of respondent No.1 is that three cheques for ₹ 60,00,000/- were issued by the petitioners on behalf of the Company towards sale consideration, but

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the petitioners got mentioned wrong recitals regarding receipt of payment of entire sale consideration amount by respondent No.1.

In the considered opinion of this Court, the disputed questions of fact and law are involved in the matter in dispute and thus the same can only be decided effectively after adducing the evidence by both the parties. Therefore, the impugned complaint (Annexure P-5), at this stage, is not liable to be quashed.

In view of the discussion above, petition is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

August 08, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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