

CRM-M-14308 of 2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14308 of 2011 (O&M)

Date of decision: 05.07.2018

M/s Clarity Gold Private Ltd and others

...Petitioners

Versus

M/s Jagdish Jewellers Private Ltd. and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Deepa Jain, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Despite last opportunity, affidavit of Gurpreet Singh, Advocate, practising at Patiala, who had issued legal notice dated 16.10.2010 (Annexure P3) to the petitioners, has not been filed. Even none has appeared on behalf of respondent No.1 and the State of Punjab. Therefore, it can safely be presumed that counsel for respondent No.1 and learned State counsel are no more interested in contesting the instant petition.

Through this petition under Section 482 Cr.P.C., petitioners sought quashing of complaint (Annexure P1) titled 'M/s Jagdish Jewellers Private Ltd. Vs. M/s Clarity Gold Private Ltd and others' and the order dated 28.02.2011 (Annexure P2) passed by Judicial Magistrate 1st Class, Patiala, whereby petitioners were summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act').

In nutshell, complainant and respondent No.1-accused Company (petitioner No.1 herein) had some business dealings with each other. During

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the course of business, the petitioner-M/s Clarity Gold Private Ltd. issued a cheque of Rs.1,14,910/- in favour of respondent No.1 which was dishonoured. Consequently, Gurpreet Singh, Advocate, from Patiala served a legal notice dated 16.10.2010 (Annexure P3) to the petitioner. On receipt of the legal/demand notice aforesaid, the petitioner got made two demand drafts bearing Nos.021538 and 021539 dated 01.11.2010 amounting to Rs.2,29,820/- and 14,484/- respectively in favour of respondent No.1 and sent the same to Gurpreet Singh, Advocate vide covering letter dated 01.11.2010 (Annexure P5) through post. Despite receipt of more than double the amount, respondent No.1 with malafide and dishonest intention filed a criminal complaint under Section 138 of the Act against the petitioners in which they were summoned by learned Judicial Magistrate 1st Class, Patiala, vide order dated 28.02.2011 (Annexure P2).

Learned counsel for the petitioners contends that respondent No.1, in its reply to this petition, has intentionally concealed the receipt of two demand drafts aforesaid amounting to Rs.2,29,820/- and 14,484/- through its Advocate Gurpreet Singh and their encashment. Respondent No.1 has also not clarified dishonestly and intentionally as to why and against which transaction they had encashed aforesaid two demand drafts. The payment of Rs.2,29,820/- and Rs.14,484/- through aforesaid demand drafts was made by the petitioners against the demand notice and the dishonoured cheque in question for which complaint under Section 138 of the Act was filed. Respondent No.1 wanted to blackmail the petitioners deliberately, knowing well that they are the residents of far-away places. For that reason only, respondent No.1 raised illegal demand of more than double the amount of the cheque in question for settling the matter. Since the petitioners were residents of far-away places, therefore, illegal demand of respondent No.1

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was met by them to save themselves from unnecessary harassment. In view of above factual position, the impugned order summoning the petitioners in the complaint filed by respondent No.1 is liable to be dismissed.

Having given considerable thought to the submission made by learned counsel for the petitioners, I find merit in the instant petition as the complaint is false and frivolous and has been filed with malafide intention, despite the fact that the payment of the cheque in question has already been made. The petitioners have proved on record that they have paid more than double the amount of the cheque in question to respondent No.1.

In view of above, the present petition is allowed and impugned complaint (Annexure P1) and the summoning order (Annexure P2) are quashed.

(RAMENDRA JAIN)
JUDGE

July 05, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No