

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

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CRM-M NO.1719 OF 2018 (O&M)

DATE OF DECISION: JANUARY 17, 2018

Manish Kumar and another

.....Petitioners

VERSUS

M/s B.M.Seeds Farm, V&PO Matta, District Faridkot and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Ravinder Rana, Advocate,
for the petitioners.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court, praying for quashing of complaint dated 15.03.2016 (Annexure P-6) filed by the respondents under Section 138 of the Negotiable Instruments Act, 1881.

Referring to the pleadings in the complaint, counsel contends that it is an admitted position by the complainants that the amount of wheat seeds, which was purchased, was ₹2,52,000/- and out of the same ₹1,35,000/- has already been paid by the petitioners, leaving the remaining amount to be ₹1,17,000/-. However, the cheque amounting to ₹2,52,000/-, which has been presented and bounced, was in fact given as a security amount. Since the petitioner has already paid the substantial amount and that specified amount in the cheque does not tally with the liability, the complaint deserves to be quashed. In support of this contention, he has placed reliance upon the judgement of Kerala High Court in M.A.Abida Vs.

HMT Watches Ltd. and another, 2014 (3) R.C.R. (Criminal) 383.

On considering the submissions made by counsel for the petitioner, I do not find any force in the same.

It is primarily a matter of evidence, which has to be led by the parties to determine the actual liability of the petitioner, if any and if the cheque amount, as asserted by the petitioner, was only a security, the consequent order will be passed by the competent Court. The judgement passed by the Kerala High Court in M.A.Abida's case (supra) would not be applicable to the facts of the present case, as while deciding it, various reasons have been assigned by the Court for quashing of the complaint, one of which is the fact that the amount mentioned in the cheque did not cover the complete liability. In any case, a perusal of the order dated 15.11.2017 (Annexure P-8), which has also been challenged by the petitioner, would show that the petitioner was not appearing before the trial Court and in fact proceedings under Section 82 of the Cr.P.C. have been initiated against him. The petitioner should first appear before the Court below and thereafter put forth his submissions in an appropriate manner before the Court.

In view of the above discussion, finding no merit in the present petition, the same stands dismissed.

January 17, 2018
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

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