

**CRM-23175-2018 in/and
CRM-M-21024-2018**

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Sr. No.120

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

**CRM-23175-2018 in/and
CRM-M-21024-2018
Date of decision:11.07.2018**

Vimla Chaudhary and others

.....Petitioners

versus

**M/s G.T.Infrastructure Equipments, J-147, II Floor, Section 10. DLF.
Faridabad**

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Yash Dev Kaushik. Advocate
for the petitioners.**

Rajbir Sehrawat, J(Oral)

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Allowed as prayed for.

Annexure P-4 is taken on record.

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Present petition has been filed by the petitioners challenging the Criminal Complaint No.681 of 2013 dated 06.06.2013(Annexure P-1) and the summoning order dated 04.08.2017(Annexure P-2); vide which the petitioners have been summoned to face trial for offence under Section 138 of Negotiable Instrument Act and subsequent proceedings arising therefrom.

The brief facts of this case are that a complaint was filed by the complainant alleging that he was given three cheques, on behalf of the accused No. 1; which is a registered company, bearing No. 257356 dated 20.12.2012 for an amount of Rs. 1,47,000/-, cheque bearing No. 257387

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dated 12.02.2013 for an amount of Rs. 1 lakh and cheque bearing No. 257388 dated 26.02.2013 for an amount of Rs. 2 lakh, drawn upon State Bank of India, Dohara Branch, District Ludhiana. The cheques were issued to the complainant because the accused No. 1, the Company had hired two equipments, namely Motor Grader and Soil Vibratory Roller from the complainant, vide the work order given by all the accused on 23.11.2012. The cheques which were signed by two directors of the company were presented by the complainant for encashment. However, cheques were dishonoured on account of insufficiency of funds. Thereafter, the accused were informed about the fate of cheques. But instead of making the payment of the amounts of cheques, the accused had been making excuses that there were sufficient funds in the account. They also requested for further time with the assurance that payments will be made to the complainant through RTGS. However, the accused has not made the payment of the amount of the cheques. Believing the accused the complainant waited for some time and in the mean-time validity of one of the cheques bearing No.257356 dated 20.12.2012, for an amount of Rs. 1,47,000/- expired. Therefore, the present complaint was filed with regard to two cheques bearing No. 257387 dated 12.12.2013 for Rs. 1 lakh and cheque bearing No.257388 dated 26.02.2013 for an amount of Rs. 2 lakh, which were finally dishonored by the bank.

After presentation of the complaint, in his preliminary evidence complainant tendered his affidavit to substantiate his allegation and also tenders documents Ex:C-1 to Ex:C-21. After appreciating the documents on record and the statement of the complainant, the Judicial Magistrate issued the summoning order for the accused, including the present petitioners.

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Therefore, challenging the complaint, as well as the summoning Order, the present petition has been filed.

The pleadings and the argument of learned counsel for the petitioners is that the present petitioners have been involved in the present case only because they are the family members of the other co-accused. It is also averred in the pleading, as well as submitted in the argument of learned counsel, that the petitioners No. 1 to 3 are Directors of the company, although they have not been participating in day to day business of the company. So far as petitioner No. 4 is concerned, it is a submission of the learned counsel that he has not been even the Director of the Company. In view of these submissions, the quashing of the complaint and summoning order is prayed for.

One more fact; which needs to be noticed is; that vide Order dated 17.05.2018, this Court had directed the petitioners to place on record the interim orders passed by the Trial Court. Pursuant to that Order the petitioners have placed on record the interim Orders passed by the Trial Court. A perusal of these Orders show that the petitioners had avoided service of summons upon them. Thereafter, non-bailable warrants were issued against all the petitioners. Despite that they continued avoiding arrest or appearance before the Court. Hence the petitioner No. 4 was declared a proclaimed person vide Order dated 28.02.2018. Regarding remaining petitioners also; initiation of proceedings as per provisions of Section 82 Cr.P.C was ordered.

After perusing the pleading and considering the arguments of learned counsel for the petitioners, this Court does not find any substance in the case presented by the petitioners. It is not in dispute that cheques were,

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in fact, issued to the complainant. It is also not in dispute that the same were dishonored by the bank on being presented. What is disputed is the role of the present petitioners qua the transaction of issuance of cheques; and its relevance vis-a-vis the present petitioners.

Although the petitioners have claimed that they have no role in day to day business of the company and that petitioner No. 4 has not been a Director of the company ever, however, the complainant has made statement before the Court and has placed on record atleast 21 documents. On applying its mind, the trial Court has summoned the petitioners. However there is no challenge either to the statement made by the complainant before the Trial Court or to the documents produced before the Trial Court. The limited plea raised in the present petition is regarding capacity of the petitioners and their role in the management of the affairs of the company. This at the best, can be said to be a defense which the petitioner can avail after appearing before the Trial Court. By any means, mere submission of the petitioners qua their capacity and role in the management is not sufficient to set aside the summoning order passed by the competent Trial Court. It is to be seen with reference to the material brought on record before the Trial Court.

This Court does not even have the benefit the reading the documents which have been placed on record by the complainant before the trial Court or the statements/affidavit of the complainant made before that Court; because the same has not been attached with the present petition. Hence this Court is otherwsie also not in a position to make any comments qua the relevance of the documents tendered before the Trial Court or of the statement of the complainant made before that Court. Therefore, there is no

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reason or material available with this Court to find fault with the impugned order passed by the Trial Court whereby the petitioners have been summoned or with the complaint moved by the complainant.

Otherwise, also since the petitioners have consistently avoided the process of the Court and one of them, in fact, been declared as proclaimed person by the Court, and the proceedings under Section 82 Cr.P.C. have been initiated against other petitioners, therefore, this Court does not feel inclined to exercise of its inherent powers to interfere with the Order passed by the Trial Court.

In view of the above, finding no merit in the petition, the same is dismissed.

11th July, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*