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IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-M No.1933 OF 2019

Date of Decision: 17.01.2019

M/s Mittal Rice Mills and General Industries and another.....Petitioners

versus

Haryana Agro Industries Corporation Ltd.and another.....Respondents

CORAM HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present Mr.Rahul Jain, Advocate for the petitioners.

MAHABIR SINGH SINDHU, J (ORAL)

Present petition has been filed under Section 482 Cr.P.C for quashing of the complaint No. 514 dated 27.03.2015/20.04.2015 filed under Section 138 of the Negotiable Instruments Act and the summoning order dated 20.04.2015 and consequential proceedings arising therefrom.

It is stated by learned counsel for the petitioners that the impugned complaint is time barred and the same was filed without any proper authorization. In support of his arguments, he has also cited the judgment of Hon'ble Supreme Court in **Kamlesh Kumar v. State of Bihar and another 2014(2) SCC 424.**

Heard the learned counsel for the petitioners and perused the paper book.

There is no dispute that on the basis of complaint in question, the petitioners were ordered to be summoned by learned trial Court way back on 20.04.2015. To a specific query put by this court, learned counsel for the petitioner has replied that entire prosecution evidence is over in the

matter.

In view of the above, there is no justification to entertain the present petition under Section 482 Cr.P.C for quashing, the summoning order as well as complaint, at this stage as the contentions raised on behalf of the petitioners are the pleas of defence being mixed with factual position and which go to the root of the case at the time of trial. Therefore, this Court does not deem it appropriate to evaluate the factual position of the case as that will amount to conducting a parallel trial.

So far as the judgment cited by learned counsel in Kamlesh Kumar's case (surpa), is concerned the same is not helpful for the simple reason that in that case, first time the cheque in question was presented on 25.10.2008 and thereafter second time on 10.11.2008. The complainant sent a legal notice on 17.12.2008 i.e after expiry of 30 days from its dishonour as is clear from paragraph 9 of the judgment and which reads as under:-

“However, we find that when the cheque was presented the second time on 10.11.2008 and was returned unpaid, the legal notice for demand was issued only on 17.12.2008 which was not within 30 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid. The non issuance of notice within the limitation prescribed has rendered the complaint as not maintainable.”

However, in the present case, the position is entirely different. Perusal of the complaint reveals that both the cheques dated 29.01.2015 were dishonoured on 30.01.2015 and the registered notices were issued on 23.02.2015 i.e within 30 days and the complaint was filed on 27.03.2015.

The argument that complaint has been filed on 20.04.2015 and

the same is ante dated by the complainant deliberately is not acceptable, as from the naked eye it is apparently clear that complaint was filed on 27.03.2015. Moreover,this being a disputed question of fact can be proved by the petitioners during trial and the present petition is not the appropriate remedy.

In view of the above, there is no merit in the present petition and the same is, therefore, dismissed.

Learned trial Court is requested to expedite the trial at the earliest.

The above observations may not be construed as an expression of opinion on merits of the case.

17.01.2019
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No