

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

206

**CRM-M-10592 of 2017
Date of Decision:18.07.2019**

M/s Atma Ram Mela Ram Steels Pvt.Limited and others ...petitioners

Versus

M/s Mukesh Udyog Limited

.....respondent

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr.Manish Jain, Advocate with
Mr.Mayur Kanwar, Advocate
for the petitioners

Mr.Namit Gautam, Advocate and
Mr.Vikas Bali, Advocate
for the respondent

ANIL KSHETARPAL, J. (ORAL):

Prayer in this present petition is to quash complaint No.2809/2016 dated 24.02.2016 under Section 138 of the Negotiable Instruments Act and order dated 03.05.2016 passed by the trial Court, summoning the petitioners.

Learned counsel for the petitioners contends that order passed does not even records that the cheque was returned unpaid by the bank either because of the amount standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank. He, hence, submits that the order dated 03.05.2016 summoning the petitioners is liable

to be set aside. He relies upon a judgment passed by Hon'ble Supreme Court in the case of “Raj Kumar Khurana vs. State of NCT of Delhi and another (2009) 6 SCC 72.” Specific reliance has been placed on discussion from para 11 to 14 which are extracted as under:

Section 138 of the Act moreover provides for a penal provision. A penal provision created by reason of a legal fiction must receive strict construction. [See R. Kalyani v. Janak C. Mehta and Ors. (2009) 1 SCC 516 and DCM Financial Services Ltd. v. J.N. Sareen and Anr. (2008) 8 SCC 1]. Such a penal provision, enacted in terms of the legal fiction drawn would be attracted when a cheque is returned by the bank unpaid. Such non-payment may either be: (i) because of the amount of money standing to the credit of that account is insufficient to honour the cheque, or (ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

Before a proceeding thereunder is initiated, all the legal requirements therefor must be complied with. The court must be satisfied that all the ingredients of commission of an offence under the said provision have been complied with.

The parameters for invoking the provisions of Section 138 of the Act, thus, being limited, we are of the opinion that refusal on the part of the bank to honour the cheque would not bring the matter within the mischief of the provisions of Section 138 of the Act.

The court while exercising its jurisdiction for taking cognizance of an offence under Section 138 of the Act was required to consider only the allegations made in the complaint petition and the evidence of the complainant and his witnesses, if any. It could not have taken into consideration the result of the complaint petition filed by the

respondent No. 2 or the closer report filed by the Superintendent of Police in the First Information Report lodged by the appellant against him.

Before us a contention has been raised that the appellant did not have sufficient funds in his bank account. Such an allegation has not been made in the complaint petition. In any event, it was for the bank only to say so, as the complainant is not supposed to have knowledge in regard to the amount available in the account of the appellant.”

On a reading of the order dated 03.05.2016 passed by the trial Court, it is apparent that the Court while passing the order of summoning did not apply its mind towards the requirements of law.

Keeping in view the aforesaid facts, the order under challenge dated 03.05.2016 is set aside. Learned counsel for the respondent submits that the complainant is possessed of sufficient evidence to prove that the petitioners were not having sufficient balance in the account or petitioners had no arrangement to honour the cheque. Learned trial Court is requested to pass a fresh order. Before passing a fresh order, the trial Court would grant opportunity to the complainant to lead further evidence if prayed for.

The petition stands disposed of.

18.07.2019

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No