

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

CRM-M-215-2018.

Date of Decision: 17.05.2019.

Dada Energies Limited and anotherPetitioners.

Versus

Kolcap IndustriesRespondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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Present: Mr. Jainainder Saini, Advocate, for the petitioners.

Mr. Neeraj Gupta, Advocate, for the respondent.

Shekher Dhawan, J.

Present petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') is for quashing of complaint case No.203 dated 03.07.2015 titled as 'Kolcap Industries vs. Dada Energies Limited and others' under Section 420 of the Indian Penal Code (for short, 'IPC'), pending in the Court of learned Judicial Magistrate Ist Class, Hisar (Annexure-P8) and summoning order dated 09.11.2015 (Annexure-P9) with all other proceedings arising therefrom.

2. Facts relevant for the purpose of decision of the case; that complainant-Kolcap Industries had filed complaint under Section 420 IPC against the accused persons, namely, (1) DADA ENERGIES Ltd, (2) Pradeep Kumar B., Authorised signatory, (3) M/s Uttam Udyog, and (4) Amit Aggarwal, Proprietor Capco Marketers (Delhi). The complainant had handed over a cheque bearing No.149500 dated NIL for Rs.5,00,000/-

drawn on Corporation Bank, Hisar in favour of accused No.1 as security at the time of starting of business which is mentioned in email dated 14.02.2009. However, accused No.1 did not comply with the terms and conditions of the business, so there was a dispute regarding replacement. Thereafter, accused No.1 and 2 started blackmailing the complainant to face dire consequences as they were in possession of undated cheque of Rs.5,00,000/-. However, accused No.1 and 2 presented the above said cheque for collection to harass the complainant and forced them to criminal litigation. The intention of accused No.1 and 2 was bad since the day when the complainant was forced to hand over cheque of Rs.5,00,000/- and accused No.3 and 4 were hand-in-glove with rest of the accused. The complainant also issued a letter to the bank for stopping the payment and legal notice dated 15.01.2010 was sent to all the accused giving details of all the facts. Rather than returning the cheque, the accused filed the complaint under Section 138 of the Negotiable Instruments Act. Vide order dated 09.11.2015, all the accused were ordered to be summoned. However, accused No.1 and 3 were ordered to be summoned through concerned Managing Directors as these are legal entity.

4. At the time of arguments, learned counsel for the petitioners contended that the complaint (Annexure-P8) is complete misuse of the process of law because the cheque in question was handed over as a security cheque and by misusing the same, the complaint was filed on incorrect facts and learned trial Judge has passed the summoning order dated 09.11.2015 (Annexure-P9) without applying its judicious mind and, as such, the complaint as well as the summoning order are liable to be quashed.

5. While arguing on this point, learned counsel for the respondent contended that the petitioners had not disclosed the correct facts because non bailable warrants of arrest were issued against the petitioners. Moreso, the plea, taken by the petitioners, that the cheque, in fact, was issued as a security cheque, can, at the best, be taken as a defence and that shall be a matter of trial, but, at this stage, there is no ground for quashing the complaint and the present petition is liable to be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this Court, this Court is of the considered view that first of all, the petitioners have not disclosed the correct facts and concealed the fact relating to issuance of non bailable warrants against them and, as such, the petitioners are not entitled to the relief as claimed for.

7. Now coming to the merits of the case, the plea raised by the petitioners is that the cheque was issued as security cheque. However, that shall be a matter of trial because this plea has to be proved before learned trial Judge during the trial only and the proper remedy in such case would be to appear before the Court and to face the trial and take the pleas before learned trial Judge and to prove the same.

8. Hon'ble Apex Court in case **HMT Watches Ltd. Vs. M.A. Abida, 2015(11), SCC 776**, observed as under:-

“Having heard the learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have

expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplained with, even though respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it."

9. Similar view was taken by Hon'ble Apex Court in case **Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd., (2008) 13, SCC, 678; Rallis India Ltd. Vs. Podure Vidya Bhushan, (2011)13, SCC, 88** and CRM-M-3866-2019 (O&M) by this Court in **Shalini Enterprises and another vs. Indiabulls Financial Services Ltd., 2013(2) Civil Court Cases 835 (P&H).**

10. In view of the above, the present petition under Section 482 Cr.P.C. for quashing of complaint case No.203 dated 03.07.2015 titled as 'Kolcap Industries vs. Dada Energies Limited and others' under Section 420 IPC, pending in the Court of learned Judicial Magistrate Ist Class, Hisar (Annexure-P8) and summoning order dated 09.11.2015 (Annexure-P9), is not maintainable and the same stands dismissed. However, the petitioners shall be entitled to take all these pleas before learned trial Judge after putting in appearance before the Court.

(SHEKHER DHAWAN)
JUDGE

17.05.2019
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No