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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22704-2018

Date of Decision : May 03, 2019

M/s Bhalara Cotton Pvt. Ltd. and another

.... Petitioners

Versus

Kotak Mahindra Bank

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. H.S.Brar, Advocate,
for the petitioners.

None for the respondent-Bank.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of Criminal Complaint dated 1.7.2017 (Annexure P/6) titled **Kotak Mahindra Bank Vs. M/s Bhalara Cotton Pvt. Ltd. and another** under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") and the summoning order dated 03.07.2017 (Annexure P/7) being misuse of process of law.

2. As per the petitioners, petitioner No.1 is a private limited company and petitioner No.2 is its Managing Director. Petitioners had mortgaged their factory premises and other properties to obtain the credit loan facility with Kotak Mahindra Bank, Rajkot in the State of Gujarat. The petitioners had written two separate letters (Annexure P/2) to the respondent-Bank not to fill up and present the blank cheques issued as

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security.

3. Learned counsel for the petitioners mainly contended that the present petition is liable to be accepted as the complaint and the consequent proceedings arising therefrom are misuse of process of law on the following grounds:-

- (i). firstly because the complainant-respondent had filed identical complaint dated 24.06.2017 (Annexure P/8) against the petitioners at Bangalore with the intention to harass them;
- (ii). The loan facility was provided at Rajkot and as per clause 11.11 of the 'Master Facility Agreement' (Annexure P/1) entered into between the parties, it was agreed that the exclusive jurisdiction of Courts/tribunals/authority will be in the area of operation of the branch of the bank. For facility of reference, Clause 11.11.1 of the Agreement (Annexure P/1) is extracted below:-

“11.11. JURISDICTION AND ARBITRATION.

11.11.1 It is agreed that the Courts/tribunals/ authority in the area of operation of the branch of the bank shall have exclusive jurisdiction.”

As such, the jurisdiction was with Rajkot Courts only.

- (iii). The respondent-complainant mischievously used the blank cheques issued as security.

4. Learned counsel for the petitioners further contended that if the proceedings on the basis of said complaint are allowed to continue, that shall be misuse of the process of the Court and the Complaint (Anenxure P/6) and the summoning order (Annexure P/7) be quashed while exercising powers under Section 482 Cr.P.C.. Reliance on this point was placed on the judgment from Hon`ble Apex Court in **Dhariwal Tobacco Products**

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Ltd. and others Vs. State of Maharashtra and another 2009(1) RCR (Criminal), 677.

5. Notice was issued to the respondent-Bank, which was duly served, but no one put in appearance on their behalf on 23.10.2018, 21.1.2019 and 18.3.2019 and on 02.05.2019 and as such this Court proceeds further to decide the matter on the basis of facts available on the file and arguments advanced by learned counsel representing the petitioners.

6. Having considered the submissions made by learned counsel for the petitioners and appraisal of record of this case file, this Court is of the considered view that as per agreement (Annexure P/1) entered into between the parties, the jurisdiction was mutually conferred upon Rajkot Courts only and the Court at Chandigarh was not competent to proceed in the matter on the basis of complaint (Annexure P/6) having been filed before learned Judicial Magistrate Ist Class, Chandigarh. Secondly, it appears that the complainant is misusing the process of law as simultaneously, another complaint, Annexure P/8 was filed against the petitioners at Bangalore with similar allegations. There is no rebuttal to the arguments advanced by learned counsel for the parties and as such, this Court is of the view that if the proceedings on the basis of complaint (Annexure P/6) are allowed to continue, that shall be mis-use of the process of law and would cause injustice to the present petitioners.

7. In view of the above, the present petition is accepted and Criminal Complaint dated 1.7.2017 (Annexure P/6) titled **Kotak Mahindra Bank Vs. M/s Bhalara Cotton Pvt. Ltd. and another** under Section 138 read with Section 142 of the Act, and the summoning order dated

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03.07.2017 (Annexure P/7) are quashed, qua the present petitioners.

8. The present petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

May 03, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes