

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

125

CRM-M-20690-2019 (O & M)  
Date of Decision:07.05.2019

Numberdar Trading Company

...Petitioner

Versus

M/s Coromandel International Ltd.

...Respondent

**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. R.S. Dhull, Advocate for the petitioner.

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**MANOJ BAJAJ, J.**

Petitioner-accused has filed this petition for quashing the order dated 16.10.2018 passed by the learned Judicial Magistrate Ist Class, Bathinda whereby it has summoned the petitioner to face proceedings under Section 138 of the Negotiable Instruments Act, 1881 arising from complaint case No.COMA/5302/2017 dated 22.12.2017.

Learned counsel for the petitioner contends that the complaint (Annexure P-2) is founded on the ground that cheque bearing No.000101 dated 20.11.2017 amounting to ₹38,65,585/- drawn at HDFC Bank, Kalayat Branch was issued by the accused towards discharge of his liability and the same had dishonored on account of the instructions given by the drawer to the Bank regarding stopping the payment of the said cheque. Learned counsel for the petitioner was confronted with the fact that the summoning order dated 16.10.2018 is not on record.

At this stage, learned counsel for the petitioner refers to

Annexure P-1 to submit that the Court had issued this summon to the

accused for appearance, however, the summoning order is not on record. Learned counsel for the petitioner in support of his petition contends that the cheque in question was stolen and invites the attention of the Court to Annexure P-3, which is a DDR in that regard. It is further contended that since the cheque was stolen, therefore, the proceedings under Section 138 of the Negotiable Instruments Act are not maintainable as the cheque in question was misused by the complainant. However, it is fairly stated by him that the complainant-Company and the petitioner-accused are having commercial relationship with each other. Learned counsel for the petitioner has further relied upon the judgment of this Hon'ble Court in the case of **Devwart and another vs. Jitender Singh, 2015 ACD 159** to contend that in the said case relying upon the DDR regarding loss of cheque, which was subject matter of complaint under Section 138 of the Negotiable Instruments Act, 1881, this Court had proceeded to quash the complaint.

After hearing the learned counsel for the petitioner, this Court is of the opinion that the case set up by the petitioner for quashing of the summoning order is misconceived. The ground raised for quashing of the complaint is defence of accused and that too based on disputed facts which require evidence. Even otherwise the DDR (Annexure P-3), relating to alleged loss of property report, does not mention the fact that missing cheques were signed. The said report dated 07.03.2017 is not acceptable at this stage, as the cheque is dated 20.11.2017, i.e. subsequent to the report.

The Hon'ble Supreme Court in **Tilly Gifford versus Michael Floyd Eshwar & another, 2017 AIR (SC) 3823** while discussing the power of the High Court under Section 482 Cr.P.C., made following observations.

*“4. A perusal of the order of the High Court released on 21.05.2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 Cr.P.C., 1973 to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 Cr.P.C., 1973 would not permit the High Court to go into **disputed** questions of fact or to appreciate the **defence** of the **accused**. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a Court of Law.”*

The judgment relied upon by the petitioner may not be strictly applicable as in the said case the respondent-complainant was issued notice whereupon the reply was filed by him and the Court had treated certain contents of the written statement as admission on the part of the complainant and proceeded to hold that the presumption carried with the instrument stood rebutted and this Court proceeded to quash the complaint.

Resultantly, in view of the above Supreme Court judgment and considering the fact that neither impugned summoning order has been placed on record nor the petitioner accused has appeared before the Court pursuant to the said summoning order, no ground is made out for quashing the impugned complaint.

The petition is dismissed.

07.05.2019

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**(MANOJ BAJAJ)**  
**JUDGE**

Whether Speaking/Reasoned: Yes/No  
Whether Reportable : Yes/No