

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

CRM-M-45937-2019 (O&M)

Date of decision : 29.10.2019

M/s Libra Bus Service Pvt. Ltd. and another

...Petitioners

Versus

Mahindra & Mahindra Financial Services Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Pratap Singh, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

Petitioner No.1, a limited company alongwith his Managing Director pray for quashing of criminal complaint No.COMA/9470/2017 dated 11.08.2017 titled as “Mahindra & Mahindra Financial Services Ltd. Versus M/s Libra Bus Service Pvt. Ltd. and another” and order of summoning dated 29.08.2018, at the initial stage.

Learned counsel for the petitioners contends that the complaint in question has been filed against the limited company and its Managing Director, although, loan account is in the name of the partnership firm i.e. “Libra Infra Ludhiana”. In support of his contentions, he refers to Annexure P-2 and submits that petitioner No.1-company or its Managing Directors has no liability. Hence, he submits that offence under Section 138 of the Negotiable Instruments Act is not made out against the petitioners because the proceedings under Section 138 can only be initiated if the cheque is

issued for discharge, in whole or in part of any debt or any liability which is returned unpaid by the bank.

This Court has considered the submissions.

It is undisputed that after dishonour of the cheque, statutory notice as required under Section 138 was issued to which no reply has been submitted. Still further, correctness of argument of learned counsel at this stage cannot be examined while exercising jurisdiction under Section 482 Cr.P.C. The findings of fact can only be arrived at after the parties have led their evidence. Whether petitioners have any debt or other liability is to be adjudicated on appreciation of evidence led by the parties. There is a statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 in favour of holder of a cheque which is required to be rebutted by the petitioners. Hence, petitioners are relegated to the remedy before the Magistrate.

In view of above, the present petition is disposed of.

29.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No