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

**CRM No.M-34767 of 2015 (O&M)**
**Date of Decision: February 28, 2019**

M/s Universal Tele Services and another

...Petitioners

VERSUS

M/s Viom Networks Ltd.

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.A.P.S.Deol, Sr. Advocate with
Mr.G.S.Kaura, Advocate
for the petitioners.

Mr.Pankaj Jain, Advocate
for the respondent.

****

**INDERJIT SINGH, J.**

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint bearing No.RT/117 dated 31.07.2012 tilted as M/s Viom Networks Ltd. vs. M/s Universal Tele-Services and another, summoning order dated 31.07.2012 passed by learned Judicial Magistrate Ist Class, Mohali, order dated 13.11.2013 passed by learned JMIC, Mohali, vide which application under Section 245(2) Cr.P.C. moved by the petitioners for discharge was dismissed and judgment dated 06.08.2015 passed by learned Addl. Sessions Judge, SAS Nagar, Mohali, vide which revision filed by the petitioners was also dismissed along with all subsequent proceedings.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that complainant M/s Viom Networks Ltd. has filed the complaint against M/s Universal Tele-Services and Vinay Kumar Setia, Proprietor, M/s Universal Tele-Services under Section 138 of the Negotiable Instruments Act. It is mainly stated in the complaint that Wireless TT Info Services Ltd. (WTTIL) was a registered infrastructure provider registered under the provisions of Telegraph Act. M/s WTTIL was engaged in operation and maintenance of Wireless Passive Infrastructure and other allied services. M/s Quippo Telecom Infrastructure Limited merged into M/s WTTIL and after merger was approved, WTTIL changed its name to M/s Viom Networks Ltd. It is further stated in the complaint that accused is a proprietorship firm with accused No.2 as its sole proprietor. Accused approached to M/s WTTIL that he had expertise in providing operations and maintenance at Cell side. On representation made by the accused, complainant entered into an agreement which was termed as 'O&M Service and Diesel Provider Agreement' on 30.06.2010. As per the agreement, accused was required to provide Diesel Filling Services at all the Cell sites of WTTIL in Punjab circle by using Petro Cards of Indian Oil Corporation Ltd. provided by M/s WTTIL to the accused. Since, the amount of Petro Cards was to be repaid by the accused to M/s WTTIL, the accused issued three cheques dated 13.06.2012 bearing No.180662, 180663 and 180664 for ₹56 lakhs each, in favour of the complainant, towards discharge of its liability and all these cheques were signed by accused No.2 as proprietor of accused No.1. When the cheques were presented for encashment, they were received back dishonoured with the remarks 'Funds Insufficient'. It is further stated in the complaint that accused issued aforesaid cheques in discharge of its liability to pay an amount of ₹1,68,00,000/- being the amount of Petro cards.

Learned counsel for the petitioners argued that it is case of civil nature and relates to settlement of account. It is stated in the petition that allegations levelled in the complaint are false on the face of it. In the petition, the petitioners relied upon the clauses of agreement. Learned counsel for the petitioners argued as per averments in the petition and contended that petitioners at no point of time, were required to repay the amount of diesel to the respondent-company. The cost of the diesel was to be borne by the respondent-company. The petitioners were required to purchase the diesel by using Petro Cards provided by respondent-company to the Indian Oil Corporation. It is also argued that filing of present complaint is nothing but abuse of process of law and amounts to miscarriage of justice and same has been filed with malafide intention and ulterior motive for avoiding payment of more than ₹35 lakhs, which is due to the petitioners. It is also stated that cheques in question have been given by the petitioners to the respondent by way of security. It is further stated that cheques in question have been given in consonance to the agreement dated 30.06.2010.

After hearing learned counsel for the parties, I find that this Court, without any evidence before it, cannot give the findings of fact as to whether there was any liability to pay the amount to the complainant or whether the allegations are correct or not, or whether the complaint has been filed with malafide intention etc. The signatures on the cheques, which are with the complainant, are admitted by the petitioners and are not disputed. The case of the petitioners is that these cheques have been given as a security to the complainant and there is no liability. If duly signed cheques are in the hands of the complainant, then there is presumption under Section 139 of the Negotiable Instruments Act that these cheques have been given for discharge of legal liability etc. and this presumption is to be rebutted by the accused by raising probable defence etc. As already discussed, this Court cannot give findings of fact without any evidence and the findings of fact are to be given by the trial Court on the basis of evidence to be produced by the parties before it. As the cheques, when presented for encashment, have been dishonoured, due to 'funds insufficient', therefore, complaint under Section 138 of the Negotiable Instrument Act is maintainable. In no way, it can be held that dispute between the parties is of civil nature and complaint is not maintainable.

In view of the above discussion, I find that in no way, it can be held that filing of complaint in the present case is abuse of process of law or amounts to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case.

**February 28, 2019** **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**