

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

CRM-M-23067 of 2020 (O&M)

Date of Decision: September 22, 2020

M/s Varsha Roadlines Pvt. Ltd. and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Rau P.S. Girwar, Advocate
for the petitioners.

Ms. Rashmi Attri, AAG Punjab
for respondent No.1.

Mr. Vikram Rana, Advocate
for respondents No.2 and 3.

JAISHREE THAKUR, J. (Oral)

1. The petitioners herein seek to challenge order dated 2nd of December 2019 by which the petitioners have been declared as proclaimed persons in a complaint filed under Section 138 of the Negotiable Instruments Act.

2. In brief, the facts as stated are that petitioner No.1 is in the transportation business having trucks. It is doing work of loading and unloading of cement for Ambuja Cement Limited, whereas respondent No. 2 is a petrol filling station where the trucks of petitioner No.1 go and get their diesel etc. In lieu of the aforesaid business dealings, one undated

cheque was issued by the petitioners, which was to be retained by respondent No. 2 as a security cheque. The cheque No.582547 was drawn on Punjab National Bank, Pal Road, Jodhpur Rajasthan. On 31.05.2017, a legal notice was received by the petitioners regarding unsatisfied accounts. The accounts were reconciled wherein it was decided that the petitioners would have to make a payment of ₹97,638/- in all to respondent No. 2. However surreptitiously a complaint under Section 138 of the Negotiable Instruments Act was filed seeking payment of ₹ 8,88,310/- to the complainant on account of dishonour of a cheque bearing No 582547 drawn on Punjab National Bank, Pal Road, Jodhpur, Rajasthan. In proceedings under the Negotiable Instruments Act, service was never effected upon the petitioners, which resulted in the trial Magistrate ordering proclamation for 15th of October 2019. On the said date, the Magistrate in his order noted that the proclamation of the accused had been received back unexecuted and ordered for proclamation again for 26.11.2019 with a direction to the complainant to produce the list of property of the accused on the day so fixed. On 02.12.2019, the petitioners were declared as proclaimed persons, however proceedings under Section 83 Cr.P.C. could not be carried out as the complainant did not furnish any details about the movable and immovable properties of the petitioners.

3. Counsel appearing on behalf of the petitioners, at the very outset, submitted that the petitioners were ready to settle all disputes and brought a demand draft in court for the sum of ₹ 97,638 dated 7th of August 2020. It was argued that the petitioners were always ready and willing to settle the account, however, for reasons best known to the complainant

proceedings under Section 138 of the Negotiable Instruments Act had been initiated. Counsel for the petitioners also relies upon an e-mail as addressed to the petitioners from respondent No.3 regarding balance confirmation of an outstanding amount of ₹ 97,638/-. It is further contended that the petitioners did not put in an appearance as they were given an assurance that the complaint would be withdrawn as the account stood reconciled.

4. Pursuant to the offer of the petitioners to make the payment of the balance amount, notice was issued to respondent No. 2 and 3. Appearance has been caused on behalf of respondents No. 2 and 3. Counsel has put in his appearance in the instant petition and has also shared his power of attorney on the whatsapp group. Let the power of attorney be submitted in the Registry physically to be placed on record.

5. Counsel for the petitioners submits that a demand draft for a sum of ₹ 97,638/- has been handed over to respondents No.2 and 3, who have duly accepted the same, which fact has been conceded by the counsel appearing on behalf of respondents No. 2 and 3. Counsel for the said respondents has also suffered a statement in court through the medium of Video Conferencing that he would have no objection in case the impugned order is set aside. He also agreed to drop the prosecution against the petitioners as having being satisfied.

6. I have heard the counsel for the parties and find that no useful purpose would be served in case the proceedings under the Negotiable Instruments Act are allowed to proceed, since the complainant has suffered a statement before this court that they are satisfied with the sum of ₹ 97,638/- received by them by way of demand draft from the petitioners

herein. Consequently, the complaint case No.NACT/1063/2017 titled as *M/s Rose Filling Station and another vs. M/s Varsha Road Lines Pvt. Ltd.* as well as the impugned order dated 02.12.2019 declaring the petitioners as proclaimed persons are hereby quashed.

7. The petition is disposed of accordingly.

September 22, 2020
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No