

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

**CRM-M-21155-2019
DECIDED ON: 8th SEPTEMBER, 2022**

**M/S MUSKAN ENTERPRISES AND ANOTHER
.....PETITIONERS**

VERSUS

**M/S DIANA INTERNATIONAL
.....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Naveender P.K. Singh, Advocate with
Mr. Sahir Singh Virk, Advocate
for the petitioners.

SANDEEP MOUDGIL, J

The instant petition under Section 482 Cr.P.C has been filed seeking quashing of complaint Nos. 6337 & 6338 of 2018 dated 09.05.2018 (Annexure P-1), under Section 138 of Negotiable Instruments Act, 1881 (for short as 'the Act') titled as “M/s Diana International through its Prop. Aman Sunda vs. M/s Muskan Enterprises through its Prop. Mr. Sariq” as well as summoning order dated 09.05.2018 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Ludhiana.

Brief facts of the case are that complaints under Sections 138 of the Negotiable Instruments Act (for short 'Act') read with Section 420 IPC was filed by M/s Diana International against the petitioners on account of dishonour of two cheques bearing Nos. “002491 and 002492” dated 01.02.2018 amounting to Rs.1,00,000/- each, drawn at Standard Chartered

Bank, No.28, Ground Floor, Z Square Shopping Mall, 16/113, M.G. Road, Kanpur-208001 in discharge of legal debt as there were business dealings between the parties for sale/purchase of knitted clothes.

Needless to mention that complaint No. 6337 of 2018 pertain to cheque bearing No. 002492 and complaint No. 6338 of 2018 pertains to cheque bearing No. 002491.

The petitioners have been summoned to face trial under Section 138 of the Act vide order dated 09.05.2018 passed by learned Judicial Magistrate Ist Class, Ludhiana.

Learned counsel for the petitioners contends that petitioner No.2 is neither the account holder of the disputed cheque nor the same was signed by him, which is subject matter of the impugned complaint under Section 138 of the Act, brought by the complainant/respondent.

It has been further pointed out that the cheque was issued by proprietorship firm M/S Muskan Enterprises and the actual proprietor is Syed Shahzade Saquib. It is contended that the statutory notice was never served upon the actual proprietor of the firm.

Assertion is that the complainant/respondent is making blind accusations based on conjectures, as Petitioner No.2, against whom the alleged offence of dishonouring his signed cheque has been made in the said complaint, is neither the Proprietor of Petitioner No.1 nor holds any office in the sole proprietorship firm. The allegations made in the complaint are wholly and mainly against petitioner No.2, who is neither the proprietor, as alleged in the said complaint, nor has signed the said cheques are, thus, false

and frivolous.

It is asserted that no offence is made out against the petitioners as the very basic ingredient of identifying the accused/drawer of the cheque, is wrong and such named accused in the complaint is non-existent.

As per office, report, respondent has refused to accept notice, as such respondent is deemed to be served.

The complainant/respondent has admitted in the complaint that the petitioners have been regularly purchasing cloth from the complainant/respondent against bills on credit basis. Hence, it is clear that the business account is a running account and the cheques issued to the complainant/respondent was for the purpose of Security. Further the bank statement for the year 2017-2018 clearly shows that petitioner No.1 is making payments through RTGS/NEFT on regular basis. The said fact is further substantiated by the ledger account of petitioner No.1.

In view of discussions made hereinabove, complaint Nos. 6337 and 6338 of 2018 dated 09.05.2018 pending in the Court of learned Judicial Magistrate Ist Class, Ludhiana as well as summoning order dated 09.05.2018, are hereby, quashed qua the petitioners.

Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

8th SEPTEMBER, 2022
sham

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