

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

CRM-M-56063-2022

Date of Decision : December 05, 2022

M/s Shivangee Medicos and others

.....Petitioners

Vs.

Monica Narang

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.S. Chadha, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the complaint filed under Section 138 of the Negotiable Instruments Act with further prayer to stay the proceedings before the Magistrate during the pendency of the petition.

It is worth noticing that in reply to a Court query whether after filing of the complaint, the trial Court has issued any summoning order against the petitioners, it is stated at Bar that only the complaint is instituted, however, no summoning order has been passed by the trial Court. However, the counsel insisted upon arguing the case, though on face of it is pre-mature.

Brief facts, as set up by the petitioners, are that a collaboration agreement was executed between petitioners No.1 to 3 and its associates with the respondent-complainant and certain amount was invested as equity share by

complainant and certain financial transactions as per the statement of account had taken place between the parties.

It is argued that on 11.8.2022, a legal notice under Section 138 of the N.I. Act was issued by the respondent to the petitioners stating that there was a collaboration agreement between them and as in pursuance to Clause 2-A of the agreement, the complainant invested Rs.1,15,00,000/-, through bank transactions details of which is described in the notice. It is further stated that some documents acknowledging the payment were also executed by the petitioners in shape of affidavits along with a multi-city cheque No.373812 for Rs.1,15,00,000/- drawn on Karanataka Bank, Sector 22, Chandigarh. In the notice it is stated that on account of outstanding liability, a cheque was presented in the ICICI Bank, Gurugram, which was returned with remarks "Payment Stopped".

It is further stated that a reply was given to the notice denying all the facts. Counsel for the petitioners has relied upon separate replies, which runs into 64 pages citing various case laws by the High Courts and Hon'ble Supreme Court that the cheque was not issued against any legally enforceable debt or liability.

It is next argued that in the complaint filed before the Illaqua Magistrate, incorrect facts have been stated by the complainant and, therefore, the complaint has been filed on false grounds and is liable to be quashed.

A perusal of the complaint shows that it was instituted on 16.9.2022, along with affidavit and list of witnesses, which include the complaint through her authorized signatory Jatinder Bali, a competent official from the office of Director, PGIMS,

Chandigarh regarding the short term tender and other documents and a witness from Karnataka Bank, Sector 22 Branch, Chandigarh, along with detail of the cheque as well as a witness from ICICI Bank, Sector 54, Chandigarh or any other witness with the permission of the Court.

On a Court query, the counsel for the petitioners has fairly stated that neither issuance of cheque is denied nor signatures are denied on disputed cheque and till date no summoning order has been passed against the petitioners.

Counsel for the petitioners further could not cite any judgment that even prior to summoning of person in a complaint under Section 138 of the I.N. Act, the proposed accused has a rightly to file a petition under Section 482 Cr.P.C. praying for quashing of the same.

In view of the above and considering the fact that issuance of cheque and signatures are not denied and the trial Court has yet to apply its mind with regard to summoning of the petitioners, this petition is pre-mature and is dismissed with costs of Rs.1,00,000/- to be deposited with the Punjab and Haryana High Court Employees Welfare Association Fund within three months.

(ARVIND SINGH SANGWAN)
JUDGE

December 05, 2022
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO