

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

CRM-M-1678-2018
Reserves on 12.05.2023
Date of Decision: May 17, 2023

Agri Best India Ltd. and another ...Petitioners

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Akashdeep Singh, Advocate, for the petitioners.
Mr. Deepak Grewal, DAG, Haryana.
Mr. Roopam Aggarwal, Advocate, for respondent No.2.

SUDHIR MITTAL, J.

The accused has sought quashing of criminal complaint No.6-2 of 2017 dated 16.01.2017 filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act).

2. According to the petitioners, State Bank of India had notified auction of land, building, plant and machinery of M/s Ranger Food Private Limited (hereinafter referred to as the RFPL) of which complainant-respondent No.2 was the Managing Director. In the

CRM-M-1678-2018**[2]**

auction held on 11.07.2016, the petitioner was the successful bidder. The bid was accepted and agreement dated 08.08.2016 was executed between petitioner No.1 and RFPL. According to this agreement, the dues of State Bank of India had been cleared and subject to certain conditions, sale deed was to be executed in respect of the land and building. An affidavit of even date was sworn by respondent No.2 stating that the shares of RFPL would be transferred in favour of petitioner No.1 and that physical possession thereof had already been handed over. It also mentioned that a total of four cheques each dated 30.07.2016 and cumulatively worth Rs.1,90,02,454/- had been received which were to be presented for collection subject to certain conditions such as clearance of outstanding dues and handing over of all relevant documents of the Company. Since the terms mentioned in the affidavit aforementioned were not complied with, a communication dated 19.09.2016 was issued by petitioner No.1 requesting for compliance and presentation of the cheques thereafter. However, the cheques were presented without fulfilling the terms of the undertaking contained in the affidavit and they were dishonoured with the remark '*alterations require drawers authentication*'. Aggrieved with the presentation of the cheques without fulfilling the precedent terms and conditions communication dated 30.11.2016 was sent to the complainant-respondent No.2. It was also mentioned therein that material alterations had been made in the cheques and that unless a satisfactory explanation was given a criminal case would be got registered. Thereafter, the complaint aforementioned was filed and summoning order dated 21.01.2017 was issued.

CRM-M-1678-2018**[3]**

3. On the other hand, the case of the complainant-respondent No.2 is that agreement dated 27.02.2016 was executed for sale of land and building, plant and machinery of RFPL. Cheques in dispute were issued towards payment of part consideration. The petitioners did not fulfill their part of the agreement and fraudulently got sale deed dated 30.01.2017 executed regarding the land on which the factory was situated. The said sale deed is under challenge in a civil suit. Affidavit dated 08.08.2016 was never executed by the complainant-respondent No.2 nor any alterations were made in the cheques in dispute.

4. On behalf of the petitioners, it has been argued that offence under Section 138 of the Act, is committed only if a cheque is dishonoured for want of funds in the account or it exceeds the arrangement made with the bank. Dishonour on account of alterations requiring drawers authentication would not be an offence under the provision. Thus, the complaint and summoning order deserve to be quashed at the threshold.

5. The case of the complainant-respondent No.2, however, is that dishonour of a cheque for whatever reason is an offence under Section 138 of the Act. Whether any material alterations have been made in the cheques in dispute and whether affidavit dated 08.08.2016 had been executed is a question of fact which can only be decided during the trial. Only after conclusion of the trial can a finding be returned regarding over-writing/alteration and if the same is proved, who is the person behind the act. Thus, quashing of the complaint and summoning order would not be justified.

CRM-M-1678-2018**[4]**

6. Learned counsel for the complainant-respondent No.2 has placed reliance upon judgment dated 27.11.2012 passed in Criminal Appeal Nos.1870 to 1909 & 1910 to 1949 of 2012, *M/s Laxmi Dychem vs. State of Gujarat and others*, *NEPC Micon Ltd. vs. Magma Leasing Ltd.*, 1999(2), *RCR (Criminal)* 648, *M/s Modi Cements Ltd. vs. Kuchil Kumar Nandi*, 1998(2), *RCR (Criminal)* 77, *Electronics Trade & Tech. Dev. Corp. Ltd. vs. Indian Tech. & Engineer (P) Ltd.*, 1996(1), *RCR (Criminal)* 592 and *Rangappa vs. Mohan*, 2010(3), *RCR (Criminal)* 164, to submit that an offence under Section 138 of the Act would be committed even if a cheque is dishonoured for reasons other than want of funds and the cheque exceeding arrangement with the bank. The offence would have been committed even if the signature upon the cheque did not match with the specimen signature available with the bank, the drawer had stopped payment, account closed and the like. Section 138 of the Act has been incorporated in the statute to instill confidence in banking transactions and any interpretation which would result in displacing the reasons for which the provision was enacted has to be avoided. Whatever be the reason for dishonour, offence under Section 138 of the Act would be committed.

7. The judgments aforementioned cannot be disputed nor can the law laid down therein be questioned. It has been authoritatively held that dishonour of a cheque resulting in avoidance of liability by the drawer thereof is an offence under Section 138 of the Act. Whether the reasons for dishonour were bonafide and whether the accused was liable to be convicted was a matter of trial. Proceedings should not be quashed when

CRM-M-1678-2018

[5]

the parties are at variance over a question of fact as it would result in injustice to the complainant.

8. In this case, the petitioners allege that material alterations have been made by the complainant whereas the complainant alleges that no alterations have been done by him. A finding in this regard can only be returned after the parties have led their evidence and the same has been evaluated by the competent Court. The alteration may have been committed by the petitioners to avoid payment or by the complainant-respondent No.2 to extend the validity period. It may also be a case of no alteration and of the bank officials colluding with the petitioners. Proper finding in this regard can only be returned after evidence has been led by all sides.

9. In such a situation, quashing of the complaint and summoning order would not be justified. Accordingly, the petition is dismissed.

May 17, 2023

'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes