

2023:PHHC:092694

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116

CRM-M-13250-2023 (O&M)

Date of Decision:21.07.2023

Nidhi Tiwari @ Nidhi and another

.....Petitioners

Versus

M/s V.R. Brothers

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Naveen Bawa, Advocate for the petitioners.

HARSIMRAN SINGH SETHI J.(Oral)

1. The present petition has been filed quashing the complaint bearing No.COMI/235/2022 titled as M/s V.R. Brothers Vs. Tilak Raj and another filed under Sections 406, 420, 506 and 34 of IPC, on the ground that the summoning order has been passed by ignoring Section 202 of Cr.P.C. as the accused are living outside the jurisdiction of the Magistrate concerned and therefore, the summoning order is liable to set aside.

2. From the perusal of the complaint, a copy of which has been appended at Annexure P-1 it has been duly mentioned that all the accused went to the factory premises of the complainant which is situated within the jurisdiction of the Magistrate concerned and purchased the items for which, the payment was made through a cheque, which cheque was given to him there by Ashu Tiwari. It has been motioned in the complaint that though the items were purchased by Tilak Raj and Ms.Nidhi Tiwari but the complainant was told

that the firm M/s Shidh Shakti Apparels has having some problems in their accounts hence, the cheque will be given by Ashu Tiwari on their behalf and which cheque was dishonoured due to paucity of fund. Further allegation is that on the date when the cheque was given, same was given with due knowledge that there was no amount in the account of Mr. Ashu Tiwari, which allegations clearly shows that the cause of action in favour of the complainant had accrued in his favour within the jurisdiction of the Magistrate concerned, hence the objections objections being raised by the petitioners that under Section 202 Cr.P.C. has been violated, is without any valid justification and cannot be accepted.

3. Further, the argument of learned counsel for the petitioner that Section 202 of Cr.P.C. has been violated keeping in view the facts and circumstances of the present case, cannot be accepted in view of the settled principle of law settled by the Hon'ble Supreme Court of India in ***Criminal Appeal No.1446-2021 decided on 03.12.2021*** titled as ***Sunil Todi & Ors.Vs. State of Gujarat & Anr.*** wherein the Hon'ble Supreme Court of India has held that Section 202 of Cr.P.C. is inapplicable to the complaint under Section 138 of the Negotiable Instruments Act, in respect of the examination of witness. The relevant paragraph 38 of the judgment is as under:-

“38. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with

the laudable object of speeding up trials in complaints filed under [Section 138](#). Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that [Section 202\(2\)](#) Cr.PC is inapplicable to complaints under [Section 138](#) in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under [Section 202](#).”

3. Keeping in view the facts and circumstances as well as settled principle of law, no ground is made out for any interference by this Court qua the impugned order and the petition is accordingly dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

21.07.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No