

CRM-M-36941-2016 (O&M)

229+109

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36941-2016 (O&M)

Date of decision: September 29, 2023

M/s BTS Garments and another

....Petitioners

versus

M/s Winsome Textile Industries Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajeev Gupta, Advocate for petitioners.

Mr. Deepak Suri, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for quashing complaint No.920 of 2011 filed by respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), and summoning order dated 13.10.2015 (Annexure P-2) whereby petitioners were ordered to be summoned to face trial for commission of offence punishable under Section 138 of NI Act.

2. Brief facts first. Respondent-complainant, namely, M/s Winsome Textile Industries Ltd., filed a complaint under Section 138 of the NI Act against the petitioners and other accused persons, as two cheques amounting to Rs. 75,00,000/- and Rs. 45,30,000/-, for part payments in respect of goods in question, presented by the complainant in the Bank were returned unpaid with remarks "Funds Insufficient." By an order dated 13.10.2015 (Annexure P-2), the petitioners have been summoned to face trial.

3. Learned counsel for the petitioners submits that the petitioners have wrongly been summoned by the learned Court below to face trial for the offense punishable under Section 138 of the NI Act. Petitioner No.1 is a manufacturer and exporter of knitted readymade garments, and petitioner No.2 is the authorized signatory of said firm. In the year 2011, the petitioners had given six purchase orders to the respondent-company. Learned counsel further submits that thereafter, to start the production of material by the respondent, the petitioners gave a cheque No. 168619 dated Nil, amounting to Rs. 75,00,000/- for security purposes only. Deliveries started thereafter. When invoices No. 82 and 85 dated

CRM-M-36941-2016 (O&M)

06.04.2011 for Rs. 45,30,000.29 and Rs. 8,09,682.62 yarn arrived at the factory of the petitioners, at that time, a Letter of Credit was not opened for these goods. Learned counsel further submits that upon the request of the respondent-company, the petitioners issued cheques No. 168729 and No. 168730 for an amount of Rs. 45,30,000.29 and Rs. 8,09,682.60, respectively, as security. After the discount of the Letter of Credit, in respect of item No. 82 and 85, the petitioners requested the local branch of the respondent to return the security cheques, but they did not do so.

3.1. Learned counsel further contends that the respondent, via e-mail dated 01.06.2011 (Annexure P-11), informed that the delivery of the goods under invoice No. 210 dated 16.04.2011 for Rs. 55,40,206.93 could be lifted against the above security cheques, and once the Letter of Credit is opened and the invoice discounted, the cheques would be returned to the petitioners. But before the opening of the Letter of Credit, the respondent fraudulently deposited the above said security cheques amounting to Rs. 75,00,000.00 and Rs. 45,30,000.00 on 01.07.2011 and the same were dishonored on 05.07.2011 and 07.07.2011, respectively.

3.2. Learned counsel for the petitioners further contends that in order to extort money and to pressurize the petitioners to bow to the illegal demands of the respondent, cheques were misused, and the respondent company fraudulently got the said cheques dishonored.

4. On the other hand, learned counsel for the respondent-complainant opposes the petition and submits that the impugned order dated 13.10.2015 (Annexure P-2) has rightly been passed by the learned Court below summoning the petitioners to face the trial. He also submits that proceedings where disputed questions of facts are involved should not be quashed since the same can only be determined during the trial. He further submits that the trial before the learned Court below is progressing at a very slow speed as it is yet at an initial stage since the complainant has not been examined so far.

5. I have heard the rival contentions of learned counsel for the parties and gone through the case file.

6. The complaint in question under Section 138 of the NI Act was filed way back in the year 2011 against the petitioners. By an order dated 18.10.2016, while issuing the

notice of motion, a co-ordinate Bench of this Court had ordered that in case an application for exemption from personal appearance is filed before the learned trial Court through counsel, the same would be allowed by the trial Court. Thereafter, the matter was being adjourned from time to time. There is no order passed by this Court regarding staying proceedings before the Court below in the complaint case, yet proceedings before the Court below are heading further at a snail's pace as the complainant is yet to be examined. Parties have yet to adduce their respective evidence. Examination and cross-examination of witnesses are yet to commence despite matter being more than 12 years old.

7. As regards the arguments addressed by the learned counsel for the petitioner and noted herein above, same cannot be accepted without going into the merits based on the evidence. Disputed issues are involved in the case.

8. In the premise, instead of quashing the complaint, given that the same was filed in the year 2011, it would be rather in the interest of justice to proceed with the trial in the complaint case as expeditiously as possible.

9. Accordingly, instant petition is disposed of with a direction to the learned trial Court to proceed with the trial without granting any adjournments at the instance of either side, subject of course to its own discretion to adjourn, depending upon the work exigencies. The learned trial Court shall also not insist on the personal presence of the petitioners unless their statement is to be recorded or the Court below wishes to examine the petitioners in person.

10. Pending application(s), including application for staying the proceedings before learned trial Court, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 29, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No