

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24963-2023
Decided on : 23.11.2023

J.S.Jewellers and another

..... Petitioners

Versus

Jai Shree Ram Construction Company

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kanhiya Soni, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Section 482 Cr.PC for quashing the complaint bearing No.NACT-31 of 2022 dated 06.01.2022 (Annexure P-1) registered under Sections 138/142 of Negotiable Instruments Act, 1985 (hereinafter referred to as 'the Act') as well as summoning order dated 21.02.2022 (Annexure P-2) passed by CJM, Narnaul.

2. Learned counsel for the petitioner *inter alia* contends that admittedly, the dispute between the parties emanates from an agreement for construction of a shop of the petitioner. A perusal of the agreement dated 20.05.2020 (Annexure P-3) reveals that it was entered into between the construction company through its proprietor Mr. Jaivir Singh and petitioner No.2-Subhash Soni. The complainant Kuldeep Singh was not even a party to the aforementioned agreement, and hence, all the more reason he had no authority to file the complaint in question. It has further been submitted that for filing a complaint under Section 138 of the Act, one of the crucial ingredients

has to be a pre-existing legally enforceable debt. However, in this case it is a matter of record that no such debt was in existence. The same is evident from the fact that prior to the filing of the complaint, a complaint had also been made to the police, which was subsequently resolved between the parties. In support, learned counsel has drawn the attention of this Court to Annexures P-6 and P-7.

3. While placing reliance on the Lost Property Report (hereinafter referred to as 'LPR') dated 17.10.2021 (Annexure P-8) it has been submitted that there is documented evidence indicating the petitioner's loss of specific cheques. Additionally, it is also a matter of record that the petitioner had promptly reported the loss of his cheques to the bank with directions to stop payment concerning the aforementioned lost cheques. Consequently, it is highly improbable that the petitioner would have issued the same cheques to the complainant, especially subsequent to the filing of the Lost Property Report.

4. It has still further been asserted that it is evident upon scrutiny that the complainant had misused the stolen cheques by filing a false and fabricated complaint against the petitioner. Furthermore, given the fact that the cheques of the petitioner had been stolen, it could be reasonably deduced that the cheque misused by the complainant had not been issued to fulfill any lawful debt or obligation.

5. Heard learned counsel and perused the relevant material available on record.

6. Learned counsel for the petitioner has raised disputed questions of fact, which cannot be delved into by this Court in the exercise of its inherent jurisdiction under Section 482 Cr.PC. Whether the cheque was used to pay a

legal debt or not, or whether it was misused by the complainant, these are all issues, which would be a matter of trial when both the sides would lead their respective evidence before the trial Court. This Court would therefore, be not inclined to delve into the truthfulness or otherwise of the allegations levelled by the complainant at this stage.

10. As a sequel to the above, the present petition being devoid of any merit stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

23.11.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No