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

CRM-M-39912-2020 (O&M)
CRM-17555-2022
Date of Decision: 03.02.2023

M/S K.K. TRACTORS AND OTHERS …Petitioners

Versus

M/S MAHINDRA AND MAHINDRA LIMITED …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Abhinav Gupta, Advocate
for the petitioners.

Mr. Jasdev Singh Mehndiratta, Advocate
for the respondent.

HARSH BUNGER, J. (ORAL)

The present petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, seeking quashing of complaint bearing No.NACT-852 of 2020 dated 10.08.2020 moved under Section 138 of the Negotiable Instruments Act titled as *"M/s Mahindra & Mahindra Limited vs M/s K.K. Tractors & others"* along with all consequential proceedings arising out of it including order dated 30.10.2020 (Annexure P-8), whereby, they were ordered to be summoned for the offence under Section 138 of the Negotiable Instruments Act.

Succinctly, respondent (M/s Mahindra and Mahindra Limited) filed a complaint under Section 138 of the Negotiable Instruments Act against the present petitioners by stating that M/s K.K. Tractors, is a partnership concern and Vijay Kapoor and Damiyanti Kapoor are its partners. It was stated that M/s K.K. Tractors was appointed as dealer by the respondent-complainant Company for the sale/service of the product of the company and the accused have been managing the affairs of the firm and looking after the day to day business of the firm and were also responsible to the firm. It is stated that the accused were appointed as dealers by the respondent-complainant company for selling its products in the territory of Tehsil Patiala and Dudhan Sadhan (Punjab). It is the pleaded case of respondent-complainant Company that the accused had agreed to issue security cheques for recovering the price of goods supplied to the petitioners-accused on credit for enabling the respondent-complainant (company) to fill-in the security cheques bearing Nos.073922 and 073923, both drawn on State Bank of Patiala, Patiala in favour of Mahindra and Mahindra Limited. It is stated that the petitioners-accused have been maintaining an open and current account with the respondent-complainant and on the request of the petitioners-accused, the respondent-complainant had been selling its products to them and in turn, they had been remitting sale proceeds through cheques/demand drafts/RTGS to the respondent-complainant. It is stated that as per the accounts statements maintained by the respondent-complainant in the ordinary course of business, a sum of Rs.1,00,59,190/- (Rupees One Crore Fifty Nine Thousand One Hundred Ninety only) was found due towards petitioners-accused as on 15.06.2020, after adjusting the amount of Bank Guarantee of Rs.20 lacs. It is the pleaded case that the above referred security cheque Nos.073922 and 073923 dated 15.06.2020 for a sum of Rs.50,00,000/- and Rs.50,59,190/-, respectively, both drawn on State Bank of Patiala, Patiala were filled-in by the respondent-complainant for recovering the outstanding amount of Rs.1,00,59,190/-. It is stated that when the aforesaid cheques were presented by the respondent-complainant to its banker namely, Punjab National Bank, Mohali Branch on 15.06.2020, the same were forwarded for encashment to the bank of the petitioners-accused and the same were returned with remarks "funds insufficient". It is stated that thereafter, the respondent-complainant issued a legal notice through Registered A.D. Post dated 22.06.2020. Since, the amount was not paid within the statutory period of 15 days from the date of service of the notice and the petitioners-accused sent a false reply to the legal notice, accordingly, a complaint (Annexure P-7) under Section 138 of the Negotiable Instruments Act was filed against the petitioners-accused.

Thereafter, in its preliminary evidence, the respondent-complainant (company) examined Amit Kumar Raghav, who tendered his duly sworn affidavit Exhibit CW1/A along with documents i.e. Exhibits C-1 to C-20; whereupon, the Judicial Magistrate Ist Class, Mohali vide order dated 30.10.2020 summoned the petitioners-accused under Section 138 of the Negotiable Instruments Act.

At this stage, the petitioners have filed the present petition seeking quashing of the complaint under Section 138 of the Negotiable Instruments Act along with summoning order dated 30.10.2020 passed by learned Judicial Magistrate Ist Class, Mohali.

Notice of motion in the case was issued and the respondent has appeared and contested the petition.

During the pendency of this petition, the petitioners have filed two applications bearing ***CRM-17555-2022*** and ***CRM-41622-2022***, whereby, Annexures P-20 to P-28, have been placed on record.

On the other hand, learned counsel for the respondent handed over a reply along with Annexures R-1 to R-9 on behalf of respondent, in the Court today, which is taken on record, subject to all just exceptions. A copy, thereof, has been supplied to learned counsel for the petitioners.

Learned counsel for the petitioners has submitted that the prosecution against petitioner No.3 namely, Damiyanti Kapoor, is not maintainable as neither she is a signatory to the cheque nor she is responsible for the day to day functioning of the business. It is submitted that petitioner No.3 is a house wife and have no relation, whatsoever, with the business of the partnership firm i.e. petitioner No.1, which is solely under the control of petitioner No.2. Accordingly, it is submitted that the complaint against petitioner No.3 herein is an abuse of process of law.

Learned counsel for the petitioners has further submitted that the cheques in question, were issued in the year 2013 at the request of Rajmeet Singh, DGM Marketing, Mr. Sumit Bansal, Retail Manager and T.P.S. Walia, Area Manager for the purpose of opening up of credit facility under Channel Finance Scheme with IDBI Bank.

It is submitted that subsequently, fresh cheques were demanded on account of the fact that the previous cheques were destroyed and believing the company officials, petitioner No.2 had issued fresh cheques. It is submitted that the cheques in question, have been actually misused by the company officials as the said cheques were never issued for the purpose as claimed by the respondent-complainant (Company).

Learned counsel for the petitioners has further submitted that the State Bank of Patiala had merged in State Bank of India vide notification dated 22.02.2017 w.e.f. 01.04.2017; however, vide letter dated 02.05.2018, the Reserve Bank of India accepted the request of State Bank of India to extend the validity of old MICR cheques till 30.06.2018, clarifying that no further extension would be granted and the State Bank of India was informed to advise the new customers from the merged banks to obtain new cheque books. It is next submitted that even in a letter addressed to the Controller General of Defence Accounts, the State Bank of India apprised that the government cheques with old MICR code will be valid only for three months after the merger i.e. till 30.06.2017 and the request was made to make necessary arrangements for issuance of fresh cheque book with new MICR codes to avoid rejection.

On the basis of the said submission, it is contended that on the date of presentation of cheques in question, the said cheques were not valid and the same were liable to be returned; however due to the connivance of the respondent-complainant (company) with the bank officials, they were declared valid and were dishonoured on the ground of "insufficient funds" and accordingly, the complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent-complainant (company).

In order to support his above-said contention, learned counsel for the petitioners has placed reliance upon Annexures P-20 and P-21, which is an information under the Right to Information Act, which suggests that the State Bank of Patiala was merged into State Bank of India w.e.f. 01.04.2017 and it further states that the State Bank of India was permitted to retain MICR codes of branches of ***SBI Associate banks up to*** 30.06.2018 to facilitate clearing of cheques drawn on Associate Banks.

Reliance is also sought to be placed on other Annexures i.e. Annexures P-22 to P-28. Annexure P-23 appears to be Press release/news item; Annexure P-24 are emails and Annexure P-26 being an inquiry report dated 22.09.2021, stated to have been made on the complaint dated 06.11.2020 (Annexure P-19) submitted by the petitioners.

Per contra, learned counsel for the respondent has referred to the deed of partnership (Annexure R-1), which suggests that Vijay Kapoor and Damyanti Kapoor are partners to the extent of 50% each and they also draw remuneration from the said firm. In this regard, Clauses 6 and 7 of the partnership deed read as under :-

> "*6. That both the parties, being working partners and attending to the business, shall be entitled to remuneration, each @ Rs.15,000/- p.m.*
>
> *7. That the profits and losses of the business shall be shared by the parties, as under :-*

Name of the party	***Share of profit %***	***Share of loss %***
Shri Vijay Kapoor	50%	50%
Smt. Damyanti Kapoor	50%	50% "

In respect of the submission of learned counsel for the petitioners that the cheques were issued for a different purpose and the same have been misused by the respondent-complainant/Company, learned counsel for the respondent has re-iterated the stand taken by the respondent-complainant in its complaint under Section 138 of the Negotiable Instruments Act and has submitted that the said cheques were issued as security cheques with authorization to fill-in the same in discharge of their liability to pay the price of goods purchased by petitioner-accused on credit from the respondent-complainant/Company.

In respect of the third submission that the cheques are invalid, learned counsel for the respondent has submitted that had that been the situation that the cheques were invalid, then the concerned Bank of the petitioner should have returned the same being invalid. It is submitted that the submissions made by learned counsel for the petitioners are merely his defence, which requires to be proved and established by way of leading evidence at the appropriate stage before the trial Court and this Court is not to hold a mini trial with regard to the veracity and merits of the complaint at this stage. Accordingly, it is submitted that the petition is bereft of any merit and the same may be dismissed.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

So far as the first contention of learned counsel for the petitioners is concerned that petitioner No.3 has nothing to do with the affairs of the firm as she is merely a house wife; suffice it to say that a bare perusal of the partnership deed reveals that petitioner No.3 is a partner in the said firm to the extent of 50% share and draws remuneration from the said firm. Moreover, a specific plea has been taken in para No.2 of the complaint that being partners of the said firm, the accused have been managing the affairs of the firm and have been looking after day to day business of the firm and are responsible to the firm. Para no.2 of the complaint reads as under :-

> *"2. That M/s K.K. Tractors is a partnership concern and Vijay Kapoor and Damiyanti Kapoor are its partners. M/s K.K. Tractors was appointed as dealer by the complainant company for the sale/service of products of the complainant Company. Accused have been carrying on the business of sale/purchase of tractors and its spare parts under the name and style M/s K.K. Tractors. As partners of the said firm, accused have been managing the affairs of the firm and have been looking after day to day business of the firm and are responsible to the firm."*

Thus, the necessary pleadings in terms of Section 141 of the Negotiable Instruments Act, have been made by the respondent-complainant and the issue whether petitioner No.3 is liable under Section 138 of the Negotiable Instruments Act, or not, shall be a subject matter of trial. The initial burden by way of averment in the complaint has been made by the respondent.

I have considered the contention of learned counsel for the petitioner that cheques in question were issued for a different purpose and were misused by the respondent, however, in my considered view, this contention would be again a matter of trial as the petitioners herein have taken a stand, which is different from the stand taken by the respondent-complaint in its complaint under Section 138 of the Negotiable Instruments Act.

The third contention of learned counsel for the petitioners is that the cheques in question, are invalid cheques as the State Bank of Patiala stood merged/acquired by the State Bank of India, way back in the year 2017 and accordingly, the cheques in question, should have been returned by the concerned bank; whereas, the same were wrongly considered and returned with the memo "insufficient funds". Although, learned counsel for the petitioners has placed reliance upon various annexures to substantiate his arguments that the cheques in question, were required to be returned; however, in my considered view, all such annexures would also be required to be proved in accordance with law. It is well settled law that the annexures attached with the petition filed under Section 482 of the Code of Criminal Procedure, cannot be considered as evidence so as to be relied upon. In this regard, reference can be made to the judgment rendered by the Hon'ble Apex Court in ***State of Madhya Pradesh v. Awadh Kishore Gupta 2004(1) RCR (Criminal) 233***, wherein, the following observations have been made :-

> *" While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it*

was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In ***Chand Dhawan (Smt.) v. JawaharLal and Ors. (1992(3) SCC 317: 1992(3) RCR (Criminal) 534 (SC))****, it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No.116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the mention further."*

In view of the afore-mentioned facts and circumstances, I do not find any merit in the instant petition and the same is accordingly dismissed. However, nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case.

Pending application/s, if any, shall also stand disposed of.

February 03, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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