

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

120

CRM-M-48112-2022

Date of Decision : 06.01.2023

M/s Fine Pet And Caps and others

.....Petitioners

Versus

M/s Sunheri Texcraft Pvt. Ltd. And another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

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

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of Criminal Complaint NACT No.1776 of 2020 titled as 'M/s Sunheri Texcraft Pvt. Ltd. Vs. M/s Fine Pet And Caps and others' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') pending before learned Judicial Magistrate First Class, Panipat as well as summoning order dated 23.12.2020 passed by the trial Court and all consequential proceedings arising therefrom.

Brief facts of the case are that petitioner No.1 has been purchasing fibre etc. through petitioners No.2 to 4 from respondent No.1/complainant on credit basis. A sum of Rs.53,03,934/- is outstanding towards petitioner No.1 in the books of respondent No.1/complainant. In order to discharge the above-said liability, petitioners No.2 to 4 on behalf of petitioner No.1 issued a cheque bearing No.731015 dated 15.10.2020 amounting to Rs.50,00,000/- of Canara Bank, Baddi SME Branch, Baddi, Himachal Pradesh duly signed by petitioner No.2 in favour of respondent No.1/complainant.

However, on presentation of said cheque for encashment in the account of respondent No.1/complainant, the same was dishonoured for the reason 'paucity of funds'. Legal notice dated 09.11.2020 was issued to the petitioners but they failed to pay the amount of bounced cheque. Thereafter, respondent No.1/complainant filed complaint under Section 138 of the N.I. Act against the petitioners.

Learned counsel for the petitioners submits that the petitioners have already submitted detailed reply to the legal notice dated 09.11.2020 of the respondent No.1. The petitioners have called upon respondent No.1 to withdraw the legal notice since there is no legal liability to pay a sum of Rs.50,00,000/- by the petitioners to respondent No.1. The Judicial Magistrate First Class, Panipat vide its order dated 23.12.2020 wrongly summoned all the petitioners. As per provision of Section 138 read with Section 141 of the N.I. Act only the persons who have either signed the cheque or are responsible for day to day affairs of the company could be held liable for an offence under Section 138 of the N.I. Act. Only petitioner No.2 is signatory of the cheque in question, therefore, no offence is made out against petitioners No.3 and 4. The cheque was issued as a security cheque which has been misused by respondent No.1. If unendorsed cheque is dishonoured on presentation, offence under Section 138 of the N.I. Act would not be attracted since cheque does not represent legally enforceable debt at the time of encashment. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court passed in ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and another : 2022 All SCR (Criminal) 2097.***

I have heard learned counsel for the petitioners and gone through the paper-book.

It is a matter of evidence to be led before the Magistrate as to whether petitioners No.3 and 4 have any role as alleged by the complainant or not. The petitioners can appear before the trial Magistrate and can raise all the contentions raised in this petition before the trial Magistrate at an appropriate stage. The petitioners cannot be allowed to bypass the trial Court.

Moreover, the petitioners have filed the present petition on 12.10.2022 against the summoning order dated 23.12.2020 after a delay of about 02 years.

In view of the above, I find no merit in this petition which is accordingly dismissed.

06.01.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

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