Neutral Citation No. 2024:PHHC:016114

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 1853 of 2024 (O&M)
Date of Decision: 06.02.2024

M/s. SSP Power System and another

.... Petitioners

Versus

State of Haryana and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Mamli, Advocate,
for the petitioners.

Mr. Chetan Sharma, Deputy Advocate General, Haryana
for respondent No. 1.

Mr. A.D.S. Sukhija, Advocate,
Mr. Ajay Kalra, Advocate and
Ms. Isha Janjua, Advocate
for respondent No. 2.

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HARKESH MANUJA, J. (ORAL)

CRM-5158-2024

Prayer in the present application moved on behalf of the applicants-petitioners, is for placing on record the account statement of the petitioner as Annexure P-6.

Application is **allowed**, as prayed for, subject to all just exceptions. The aforesaid document is taken on record as Annexure P-6.

Registry to do the needful.

MAIN CASE

The petitioners, by way of present petition filed under Section 482 Cr.P.C., seek quashing of the criminal complaint No. NIA/142/2019 (Annexure P-1), titled *"M/s. Radha Krishan Industries Versus M/s. SPP Power System and another"* as well as the summoning order dated

29.03.2023 (Annexure P-2), whereby the petitioners were summoned to face prosecution under Section 138 of the Negotiable Instruments Act, 1881, on account of dishonour of three cheques bearing (i) Cheque No. 022969 dated 29.12.2016, amounting to Rs. 8,65,998/-; (ii) Cheque No. 022970 dated 30.12.2016, amounting to Rs. 4,38,480/-; and (iii) Cheque No. 022971 dated 03.01.2017, amounting to Rs. 7,30,800.

[2] The only argument raised on behalf of the petitioners in the present petition is that as per the own ledger account statement (Annexure P-5 / page-27 to 31) maintained by respondent No. 2-complainant, the payments against the three cheques in question were credited in their accounts against entries dated 04.07.2016, 11.07.2016 & 16.07.2016. In view thereof, it has been contended that no amount was due against the cheques in question and the liability of the petitioner stood discharged in terms of the aforementioned entries and thus, the complaint as well as the summoning orders were liable to be quashed.

[3] On the other hand, learned counsel for respondent No. 2, while referring to the contents of the complaint, submits that the cheques in question were issued against discharge of liability towards three separate and specific invoices, whereas the credit entries referred by the petitioners, while referring to Annexure P-5, do not tally with those specific invoices and thus, the contention raised on behalf of the petitioners as regards the liability against the cheques in question having been discharged was not made out.

[4] I have heard learned counsel for the parties and gone through the paper-book.

[5] A perusal of complaint (Annexure P-1) clearly shows that in para-5 thereof, it has been specifically mentioned by respondent No. 2 that three cheques in question were issued against discharge of liability towards three specific invoices. Para-5 of the said complaint is re-produced hereunder:-

> *" That the accused no. 2 purchased material from 05-04-2016 to 26-08-2016 through various bills and out of which accused purchased grey oxide and Lead Alloy from complainant firm through invoice no. RKI/0063/16-17 Dated 09-07-2016 for a sum of Rs.8,65,998/- against C form and the said material was delivered to accused through Aastha Transport company vide truck No. HR 58A-8902 and GR No. 761 dated 09-07-2016, invoice no. RKI/0056/16-17 Dated 05-07-2016 for a sum of Rs.438480/- against C form and the said material was delivered to accused through Aastha Transport company vide truck No. HR 65-4433 and GR No. 760 dated 05-07-2016, and invoice no. RKI/0069/16-17 Dated 16-07-2016 for a sum of Rs. 730800/- against C form and the said material was delivered to accused through Aastha Transport company vide truck No. HR 58A-4809 and GR No. 762 dated 16-07-2016 and which material was duly received by the accused firm and huge amount was outstanding towards accused in fact previously accused made payment bill to bill and thereafter complainant requested so many times to make the payment but accused no. 2 linger on the matter on one and other pretext. "*

[6] Upon comparison of the details of the invoices mentioned in para-5 of the complaint with the ledger account statement (P-5), it can be clearly traced out that against Invoice No. RKI/0056/16-17 dated 05.07.2016 for Rs. 4,38,480/-, no credit entry can be seen in the ledger account statement. Besides it, even against the invoice No. RKI/0063/16-17 dated

09.07.2016 for Rs. 8,65,998/-, no entry of any such amount can be seen and thus, no definite and distinction can be formed about the discharge of liability by the petitioners against the cheques in question as compared to the invoices pleaded in the complaint. Moreover, the plea raised by the petitioners to the effect that the payment against the cheques in question stands discharged in favour of the complainant being a disputed question of fact in the given circumstances when this is seriously disputed, can only be gone into during trial after grant of opportunities to both the parties to prove their respective claims.

[7] The Hon'ble Supreme Court in case of **"*Rajeshbhai Muljibhai Patel and Others Versus State of Gujarat and another*"** reported as ***2020 AIR (SC) 818***, held that in the event of disputed facts, complaint under Section 138 of the Negotiable Instruments Act, cannot be quashed. Relevant para-20 of the said judgment is re-produced hereunder:-

> *" **20.** The High Court, in our view, erred in quashing the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under section 138 of N.I. Act. As pointed out earlier, Yogeshbhai has admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under section 139 of the N.I. Act in favour of the holder of cheque that is the complainant-appellant No.3. The nature of presumptions under section 139 of the N.I. Act and section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3-Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under section 139 of N.I. Act will*

> *continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C., 1973 Though, the Court has the power to quash the criminal complaint filed under section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under section 138 of N.I. Act. "*

[8] Accordingly, in view of the given circumstances wherein the case put forth by the petitioners regarding discharge of liability while referring to the credit entries (P-5) has been disputed and the same is not even definitely and distinctly made out on the face of it from the ledger account entries, the same being a factual issue cannot be gone into while exercising the powers under Section 482 Cr.P.C.

[9] Resultantly, the present petition is hereby **dismissed**.

February 06, 2024 **(HARKESH MANUJA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes*
Whether Reportable	*Yes*