

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127

CRM-M-1314-2019
Date of decision: 12.02.2024

MILAN JAIN AND OTHERS

....Petitioners

Versus

STATE OF HARYANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Munish Behl, Advocate
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. The petitioners who are Ex-Chairman and Ex-Directors of M/s Lumax Automotive System Ltd. (a company incorporated under the Companies Act, 1956) filed the instant petition under Section 482 Cr.P.C, seeking quashing of FIR No.315 dated 06.04.2018 (Annexure P-4), registered under Section 174-A of Indian Penal Code, 1860, at Police Station Sarai Khawaja, District Faridabad, and all subsequent proceedings arising therefrom.

2. In the instant matter, respondent No.2/complainant had filed a

complaint under Section 138 of the Negotiable Instruments Act, 1881, read with Section 420 of IPC, alleging therein that he had worked with M/s Lumax Automotive System Ltd., Plot No.46 IMT Manesar, Gurgaon (Haryana) from 12.01.1989 to 30.06.2016, and the company issued three cheques dated 30.07.2016, 30.08.2016 and 30.09.2016, respectively of Rs.2,02,972/- each, i.e. Rs.6,08,916/- of total amount, towards full and final payment, and final clearance from dated 30.06.2016. It was further alleged in the instant complaint that when respondent No.2/complainant, presented the said cheques to the bank for clearance, the same were received back unpaid, vide different memos, with the remarks as "Funds Insufficient", and after dishonour of the said cheques, the respondent No.2/complainant approached the present petitioners, and requested them to make payment of the cheque amount. Upon above mentioned averments, the complaint under Section 138 of the Negotiable Instruments Act, was filed by respondent No.2/complainant against the present petitioners, before the learned Judicial Magistrate First Class, Faridabad.

3. Thereafter, the petitioners were summoned to face the trial under Section 138 of the Negotiable Instruments Act, 1881. It is further revealed from the perusal of the paperbook, that the accused-company M/s Lumax Automotive System Ltd. is under liquidation proceedings, and an official liquidator is already appointed by the order passed by the High Court at New Delhi, and the liquidator has already taken over the possession of the said company.

4. The petitioners failed to cause appearance in pursuance of the summoning order, which led the learned trial Court concerned, to declare the petitioners as proclaimed persons, vide order dated 07.02.2018 (Annexure P-3). The learned trial Court concerned, also passed a direction to lodge an FIR, against

the present petitioners, under Section 174-A of the Indian Penal Code.

5. The challenge has been thrown to the FIR No.315 dated 06.04.2018 (Annexure P-4), registered under Section 174-A of Indian Penal Code, 1860, at Police Station Sarai Khawaja, District Faridabad, by the learned counsel for the petitioners, mainly on the following grounds:-

1. The bailable warrants which have been issued against the present petitioners were never served upon the petitioners, at the place of resident, or their place of work, through any mode of service.

2. The main complaint filed under Section 138 of the Negotiable Instruments Act, 1881, had been withdrawn by respondent No.2/complainant, as the matter had been settled between the parties.

3. Since the petitioners have caused appearance in view of the proclamation order, and thereupon, a compromise deed was placed on record, therefore, putting the petitioners on trial would be a sheer abuse of the process of law.

6. This Court has considered all the relevant documents attached with the instant petition, as well as the submissions made by the learned counsel for the petitioners.

7. So far as the first submission made by the learned counsel for the petitioners is concerned, the attention of this Court was drawn to the order dated 05.01.2018, (Annexure P-5), which is the report of serving Police official, according to which the whereabouts of accused were not found at the address given in the publication. The relevant extract of the same reads as under:-

"For service of publication in question, whereabouts of the accused were enquired into by visiting at the address given in the publication. The accused was not found present there. One copy of publication was pasted at the given address. One copy of the publication was pasted at open place. One copy of the publication was pasted outside the Court and one copy of the publication is put up before yourself alongwith the report."

8. The above report of the serving Police official gives strength to the argument made by learned counsel for the petitioners, that they have not been effectively served as per the requirement of Section 82 (1) of Cr.P.C. and as far as the second argument is concerned, it also corroborated from the order dated 18.05.2018 (Annexure P-6), passed by Judicial Magistrate First Class, Faridabad, whereby, on the statement made by the respondent No.2/complainant, the main complaint filed under Section 138 of the Negotiable Instruments Act, 1881, was ordered to be dismissed as withdrawn.

9. This Court, in order to lend strength to the third argument made by learned counsel for the petitioners, placed reliance upon the judgment passed in CRM-M-32493-2017 dated 06.11.2017 (Annexure P-9), whereby, on the similar facts, the main complaint under Section 138 of the Negotiable Instruments Act, 1881, was withdrawn by the complainant, and the Co-ordinate Bench of this Court quashed the proceedings under Section 174-A of IPC, considering it to be a sheer abuse of the process of law. The relevant extract of the same reads as under:-

"After hearing learned counsel for the parties, I find merit in the present petition. Since the petitioner has already compromised the matter with the complainant Mandeep Singh by paying an amount of Rs.30,000/- and Mandeep Singh has withdrawn the proceedings under Section 138 of the Act during pendency of which, the trial Court has initiated the proceedings under Section 82 (1) Cr.P.C. as well as passed the impugned

order dated 28.02.2017 for registration of FIR against the petitioner under Section 174A IPC. Considering the fact that it has come on record as per the order dated 02.01.2017 passed by the trial Court that whereabouts of the petitioner could not traced when the warrants of arrest were issued against him in the aforesaid complaint under Section 138 of the Act, therefore, the proclamation under Section 82 (1) Cr.P.C. on the same address was not in accordance with the law."

10. In view of the submissions made by counsel for the petitioners, this Court is of the view that the present petition is liable to be **allowed** on the above discussed facts, and legal preposition, therefore, the FIR No.315 dated 06.04.2018 (Annexure P-4), registered under Section 174-A of Indian Penal Code, 1860, at Police Station Sarai Khawaja, District Faridabad is ordered to be **quashed**.
11. Disposed of accordingly.

12.02.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No