

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17666-2024 (O&M)

Decided on 15.04.2024

M/s Daulatram Engineering Services P.Ltd. & Ors. ... Petitioners

VS.

M/s Vimal Alloys P.Ltd. ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Eshna Gupta, Advocate for the petitioner (through VC)

Sandeep Moudgil, J.

(1). The petitioner has filed the present petition under Section 482 CrPC seeking quashing of the criminal complaint dated 21.12.2018 (Annexure P1) bearing NACT No.532 of 2018 under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) and subsequent proceedings arising therefrom.

(2). Learned counsel for the petitioner submits that the full payment of Rs.13,59,714/- has already been made against the liability of purchase order dated 06.02.2018 (Annexure P2) and in regard thereto, invoice/bill No.423 (Annexure P3) have also been raised by the respondent and as a security cheque, post dated cheque No.819500 dated 15.08.2018 was issued by the petitioners No.2 to 4. He also submits that as per discharge application and bank statement, the payment towards the cheque in question has also been disbursed to the respondent through NEFT on 19.02.2019 and the present proceedings has been launched against the petitioners only to extract extra money from them.

(3). It is contended that the respondent-complainant has filed the impugned complaint on the basis of forged and fabricated cheque in question

as the same was given as security to the complainant. He further argued that as per Section 138 of NI Act, only in case a cheque issued by the drawer towards discharge of its legal liability is dishonoured for want of sufficient funds, then penal provisions can be attracted. Reliance has been placed on **KR Indira vs. Dr. G Adinarayana, 2004 (1) RCJ 472 SC.**

(4). She further argued that the respondent is not entitled to interim compensation under Section 143A of the NI Act as granted vide order dated 28.09.2022 inasmuch as full payment has been made against the cheque in question. It is then exhorted that had the cheque been issued towards returning of the amount, the petitioner would have written the loan amount by himself and in that case, there was no occasion for the petitioner to give the blank cheque.

(5). On the query put by this Court as to whether the respondent has received the payment alleged to have been made and to place on record such admission by the respondent, Ms. Eshna Gupta, Advocate, in all fairness, submits that though, as per the bank account statement appended with the application under Section 245 CrPC filed by the petitioners before the trial court to discharge them, the payment stood transferred to the respondent through NEFT, however, there is nothing to show that the respondent has expressly conceded such payment.

(6). Having heard learned counsel for the petitioner and also taking into consideration the fact that before the trial court it has come on record that the alleged payment was made on 22.02.2019 whereas the complaint was filed on a prior date i.e. 21.12.2018 i.e. much beyond 15 days from the date of service and also the fact that the complainant cannot be compelled, who is

otherwise not willing to compound the offence, and also since disputed questions of fact are involved in the present case which cannot be adjudicated under the present proceedings under Section 482 CrPC as the same needs to be examined very cautiously and sparingly as has been held by the Supreme Court in a catena of judgments, especially in the light of the fact that the petitioner has failed to show any admission on the part of the respondent regarding receipt of payment through NEFT and as such, such argument cannot be accepted at this raw stage of trial, this Court does not find any valid reason to interfere in the trial proceedings, however, liberty is granted to the petitioner to adduce such evidence and make plea in regard to their contention of payment to the respondent before the trial court.

(7). Dismissed.

15.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No