
(2003) 01 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 22023 M of 98 & Criminal Miscellaneous No. 22025 M of 1998

Aravali Pipes Limited and Sh. V.K. Bansal

APPELLANT

Vs

Haryana State Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 245(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 3 BC 176

Hon'ble Judges : Kiran Anand Lall, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant; Kamal Sharma, for the Respondent

Judgement

Kiran Anand Lall, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing of complaint, filed under Section 138 of the Negotiable Instruments Act, 1881 and the summoning order, Annexures P-1, and P-2 respectively. The pleaded grounds of quashing are that the required notice of 15 days was not given by the complainant to the petitioners-accused and secondly, the complainant was not duly authorised to file complaint on behalf of the respondent-corporation.

2. In the written reply filed by the respondent-corporation, it was pleaded that the required notice was sent to the petitioners through registered post. Photo copy of postal receipt in this regard, Annexure R-1, has also been annexed with the reply. It was further pleaded that the respondent-corporation has filed the complaint through its Manager who was duly authorised to file it and averments made in this regard in para No. 1 of the complaint, Annexure P-1, will be substantiated by leading evidence, at appropriate stage.

3. The above mentioned two grounds on the basis of which quashing of complaint and the summoning order has been sought involve disputed questions

of fact, and such questions can be determined only after the parties are afforded opportunity to lead evidence in respect of their respective averments.

4. So far, the trial court has only ordered the summoning of the petitioners as accused in the complaint. It is, therefore, open to the petitioners to plead before the Magistrate that the process against them ought not to have been issued and this right flows from the provisions contained in Section 245(2) of the Code of Criminal Procedure, which read as under:-

245. When accused shall be discharged.-(1)

(2) Nothing in this section shall be demand to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

5. If any authority is needed on the point in question, reference may be made to K.M. Mathew Vs. State of Kerala and another, , in which it was held that "the order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has also been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused".

6. In the light of what has been discussed above, it is held that it is not a fit case calling for quashing of complaint and the summoning order, by exercising inherent powers u/s 482 of the Code. But, it is clarified that the petitioners will be within their rights to take up all the pleas available to them, before the trial court at appropriate stage.