

(2013) 07 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-29964 of 2010 (O and M)

M/s. Shiroga International Pvt. Ltd. and Others

APPELLANT

Vs

M/s. Sharnam Knitchem and Another

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 172 PLR 577

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Namit Gautam, for the Appellant; Yogesh Goyal, for the Respondent

Final Decision : Allowed

Judgement

Sabina, J.—Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure, 1973 seeking quashing of the complaint No.

637/2 dated 06.12.2003 (Annexure P-1) as well as the summoning order dated 04.02.2004 (Annexure P-2) and all the subsequent proceedings

arising therefrom. Learned counsel for the petitioners has submitted that the cheque amount in the present case is Rs. 10,000/-. Petitioner is ready

to pay triple the said amount to the respondents. In fact, the petitioner had offered to pay the cheque amount in question to the respondents on the

very first day of his appearance before the Trial Court i.e. 07.02.2005. However, the application moved by the petitioner in this regard was

dismissed by the Trial Court on 04.10.2005. Thereafter, petitioners again moved an application on 25.08.2006 to pay the cheque amount in

question for the settlement of the dispute. However, the petitioner could not comply with the terms of the compromise. Thereafter, petitioner again

agreed to pay double the cheque amount on 05.06.2010 and moved an

application for his discharge but the same was dismissed by the Trial Court vide order dated 23.07.2010 (Annexure P-7). In order to show his bona fide, petitioner had got a draft in the sum of Rs. 20,000/- prepared in the name of the respondents and photocopy of the same has been placed on record as Annexure P-8. Now the petitioners are ready to pay triple the cheque amount to the respondents. With regard to the recovery of other amount due from the petitioners, civil suit filed by the respondents has been decreed and execution proceedings are pending in the said case. In support of his argument, learned counsel for the petitioners has placed reliance on the decision of this Court in Criminal Miscellaneous No. M-23421 of 2008 decided on 11.11.2010 wherein it was held as under:--

Heard.

This criminal misc. application has been filed for quashing of a complaint No. 223/2 dated 01.04.2003 (Annexure P-2) u/s 138 of the Negotiable

Instruments Act (hereinafter referred to as "the Act") and the order dated 31.05.2003 (Annexure P-3), passed by the learned trial Court,

summoning the accused-petitioner. The amount of the cheque in question in respect of which the offence u/s 138 of the Act is alleged to have been

committed is Rs. 17,000/-. The accused-petitioner is ready and willing to pay the said amount and in fact had brought a demand draft for an

amount of Rs. 17,000/- on the previous date i.e. 23.12.2009. However, the complainant refused the said amount and pressed for adjudication on merits.

The provisions of Section 147 of the Act, which makes all the offences under the Act compoundable and the law laid down to the effect that

compounding of the offences under the Act would be permissible even after conviction would indicate the manner in which the Courts should deal

with an offence allegedly committed under the Act. In a situation, where the accused is ready and willing to pay the amount of the cheque in

question the insistence of the complainant for an adjudication on merits by refusing to accept the amount, itself, would amount to an abuse of the

process of the Court.

In view of the above, I am of the considered opinion that the proceedings against the accused-petitioner in complaint No. 223/2 dated 01.04.2003

(Annexure P-2) u/s 138 of the Act and the order dated 31.05.2003 (Annexure P-3), summoning the accused-petitioner should be quashed in the

interest of justice subject to the condition that the accused-petitioner will deposit the bank draft of Rs. 17,000/- with the Registrar General of this

Court within ten days from today. Thereafter, the said bank draft may be received by the complainant.

Consequently, this application is allowed and the proceedings in complaint No. 223/2 dated 01.04.2003 (Annexure P-2) u/s 138 of the Act and

the order dated 31.05.2003 (Annexure P-3) shall stand quashed.

2. Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that the respondents cannot be forced to

compound the offence. Further learned counsel for the respondents has laid stress on the fact that petitioners had agreed to pay Rs. 4,50,000/- to

the respondents towards full and final settlement of their claims but had failed to honour the terms of the compromise. Learned counsel for the

respondents has further submitted that trial is near completion as statement of the petitioners has been recorded u/s 313 Cr.P.C.

3. In the present case, the complaint in question has been filed by the respondents with regard to dishonour of cheque in the sum of Rs. 10,000/-

dated 23.08.2003. As per the respondents, a sum of Rs. 6,30,000/- was outstanding against the petitioners. Admittedly, respondents have filed a

civil suit for recovery with regard to the due amount and the said suit has been decreed.

4. Learned counsel for the petitioners, during the course of arguments, has submitted that execution proceedings with regard to the decree passed

by the Civil Court were going on.

5. So far as the present complaint is concerned, the cheque amount in question is Rs. 10,000/-. Petitioners have undertaken to pay the triple of the

said amount to the respondents. The fact that some more amount is due against the petitioners is not relevant for disposal of the present case as

with regard to the said amount, civil proceedings/execution proceedings are pending. So far as the present petition is concerned, the same relates

to the dishonour of cheque in the sum of Rs. 10,000/-. Since the petitioners are ready to pay triple the cheque amount in question to the

respondents, it would be just and expedient to quash the criminal proceedings.

Although, respondents cannot be forced to compound the offence but this Court can exercise its powers u/s 482 Cr.P.C. to quash the FIR in view of the facts and circumstances of the present case. Petitioners are directed to deposit a bank draft in the sum of Rs. 30,000/- with the trial Court within a period of ten days from today. Respondents would be at liberty to withdraw the said amount thereafter. Accordingly, this petition is allowed. Criminal complaint No. 637/2 dated 06.12.2003 (Annexure P-1) and all the subsequent proceedings arising therefrom including the summoning order dated 04.02.2004 (Annexure P-2) are set aside. In case the petitioners fail to deposit the amount of Rs. 30,000/- before the Trial Court within a period of ten days from today, this petition shall be deemed to have been dismissed.