

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-12602-2011 (O&M)

Date of Decision: 24.08.2017

Navish Malhotra

.....Petitioner

Versus

Smt. Prem Lalta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Amandeep Soni, Advocate
for the petitioner.

Mr. Sudhir Paruthi, Advocate
for the respondents.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of order dated 12.03.2011 (Annexure P-6), whereby the application filed by the respondents seeking their impleadment as legal heirs of complainant-Baldev Raj who expired on 09.11.2010, was allowed.

Briefly stated that complainant/deceased-Baldev Raj, who was husband of respondent No.1 and father of respondents No.2 to 4 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') stating therein that the petitioner-accused had taken a friendly loan for an amount of Rs.3,00,000/- on 20.12.2006 and had

promised to repay the same. In order to repay the said amount, the petitioner issued a cheque No.006173 dated 24.05.2007 for a sum of Rs.3,00,000/- drawn on Central Bank of India, Jalandhar, in favour of complainant/deceased-Baldev Raj. However, when the said cheque was presented in the bank, the same was returned to the complainant vide memo dated 30.05.2007 with remarks-“funds insufficient”. Accordingly, a legal notice dated 02.06.2007 was served upon the petitioner for making the payment within 15 days as required under the Act. Since petitioner failed to make the payment within the stipulated period, the complainant had filed complaint. Petitioner was held guilty in the complaint for the offence under Section 138 of the Act and vide judgment of conviction and order of sentence dated 02.02.2009, he was sentenced to undergo RI for one year and to pay fine of Rs.10,000/- and in default thereof to further undergo RI for three months.

Aggrieved by the aforesaid judgment of conviction and order of sentence, petitioner has filed an appeal before the learned Additional Sessions Judge, Jalandhar (for short 'the lower appellate Court'). However, when the said appeal was pending consideration before the lower appellate Court, complainant-Baldev Raj died on 09.11.2010. In order to pursue their claim, respondents No.1 to 4, claiming to be the legal heirs of complainant/deceased-Baldev Raj, have filed an application for their impleadment, was allowed by the lower appellate Court vide order dated 12.03.2011.

Learned counsel for the petitioner while placing reliance on **'S.Rama Krishna Vs. S.Rami Reddy (D) by his LRs and others'**, 2008(2) RCR (Criminal) 894 has argued that on the death of complainant, an application moved by the legal heirs of the complainant to bring them on record, is not legally sustainable.

On the other hand, learned counsel for the respondents has placed reliance on the judgment passed by Hon'ble the Apex Court in **'Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (dead) by LRs'**, 2004(4) RCR (Criminal) 1001 and argued that in proceedings under Section 138 of the Act on the death of complainant, the legal heirs can be allowed to pursue the proceedings.

I have heard learned counsel for the parties.

There is no dispute that the complaint filed by complainant/deceased-Baldev Raj was allowed and the petitioner was convicted and sentenced for the period indicated above. Against the said judgment of conviction, petitioner has preferred an appeal and during the pendency of the appeal complainant-Baldev Raj died on 09.11.2010. The proceedings under the Act more particularly under Section 138 of the Act no doubt are criminal in nature, but has civil bearing as well. On the death of complainant-Baldev Raj, his legal heirs have rightly approached the lower appellate Court to get themselves impleaded in place of complainant/deceased-Baldev Raj. Therefore, this Court does not find any illegality in the impugned order dated 12.03.2011 passed by the lower

appellate Court. Moreover, the proposition is fully covered by the judgment passed by the Hon'ble Apex Court in Jimmy Jahangir Madan's case (supra).

Accordingly, this Court finds that present petition is without any merit and the same is dismissed.

24.08.2017
ashok

[HARI PAL VERMA]
JUDGE

Whether speaking/reasoned	:	Yes	/	No
Whether reportable	:	Yes	/	No