

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M 24284 of 2017
Date of Decision: 20.7.2017

M/s Swati Cast & Forge Private Limited and another ..Petitioners

versus

M/s Virat Special Steels Private limited ..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Manish Jain, Advocate, for the petitioners.

RAMENDRA JAIN, J.

Prayer, in the instant petition under section 482 of the Code of Criminal Procedure, has been made for quashing the order dated 18.5.2017 (Annexure P-1), dismissing the revision petition of the petitioners against their summoning order dated 7.6.2014 (Annexure P-2). Further, the petitioners also seek quashing of summoning order dated 7.6.2014 (Annexure P-2) passed by Judicial Magistrate 1st Class, Ludhiana under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”) as also criminal complaint (Annexure P-3) filed before the trial court.

Briefly stated, the respondent-company, through its Account Assistant Shri Nitesh Kumar, being authorised person vide resolution dated 22.4.2014, filed the complaint against the petitioners under Section 138 of the Act against bouncing of cheque for Rs.5,00,000/-.

After recording the preliminary evidence, the petitioners were summoned vide order dated 7.6.2014 (Annexure P-2) by the trial court.

Being aggrieved, the petitioners preferred CRM-M No.27432 of 2015 before this court and the same was dismissed vide order dated 18.8.2015 with the observation that the powers conferred by Section 482 of the Code of Criminal Procedure cannot be exercised in view of the statutory remedy available to the petitioners of filing revision under the Criminal Procedure Code. Simultaneously, the petitioners had also filed a revision before the Sessions Court, Ludhiana, challenging the impugned summoning order dated 7.6.2014 (Annexure P-2) on the ground that since the complaint was not filed by a competent person, therefore, the summoning of the petitioners was bad in law, which, after hearing both the sides, was dismissed by the revisional court vide judgment dated 18.5.2017 (Annexure P-1) on the ground that defect in filing the complaint by the respondent-company is curable and since the complaint was at an initial stage, the complainant-respondent company could rectify the defect.

Learned counsel for the petitioners drew the attention of this court towards the deposition of Nitish Kumar (CW-1) the authorised signatory of respondent-company, wherein he has admitted that the impugned complaint was filed by him with due authorisation by Board resolution, dated 22.4.2014, Ex. C1, passed by the Board of Directors, of the respondent-company, whereby he was authorised to file the complaint against M/s Jay Em Steel Cut Tools, Indore and not against the petitioners-company, named as M/s Swati Cast & Forge Private Limited and that he was not aware on which date the cheque in question was received by the respondent-company from the petitioners and who had handed over the same to the respondent-company and urged that from the above admission of Nitish Kumar (CW-1), the authorised signatory, it is evident on the

record that he was not in the knowledge about the alleged transaction in between the petitioners and the respondent-company and issuance of cheque etc. and therefore, the learned trial court should not have proceeded further with the trial. The learned counsel for the petitioners, in support of his arguments, has relied upon the judgment in A.C.Narayanan versus State of Maharashtra and another, (2014) 11 Supreme Court Cases 790. He has further contended that the learned trial court ought to have dismissed the complaint at the very threshold as it was not filed by the authorised signatory. The said infirmity cannot be permitted to be cured later on, during the pendency of the complaint, in view of the judgment rendered in Manish Jain versus Surender Singh, 2015 SCC Online P&H 4895. The finding of the revisional court that the said error could be curable and rectified by the respondent-company are patently illegal and wrong.

I have given my thoughtful consideration to the submissions made by learned counsel for the petitioners.

The impugned complaint (Annexure P-3) was filed by the respondent-company through its authorised signatory Nitin Kumar (CW-1) authorising him to file the same vide resolution dated 22.4.2014 Ex.C1. However, the aforesaid resolution Ex.C-1 (Annexure P-4), of the Board of Directors of respondent-company shows that Nitish Kumar (CW-4) was authorised to file the complaint against M/s Jay Em Steel Cut Tools, Indore under the Act and not against the petitioners-company. However, the said typographical mistake, in the considered opinion of this court, does not by in itself, tantamount to dismissal of the complaint at its threshold, as the said mistake might have occurred on account of some typographical mistake or due to “cut and paste”, which practice is, now-a-days, prevailing or may be

on account of filing some other resolution by mistake. The facts and circumstances of Manish Jain's case (supra) are not applicable to the facts and circumstances of the present case, inasmuch as, in that case, an application under section 319 of the Code of Criminal Procedure for impleading the company as an accused was filed to remove the technical defect. In these circumstances, relying upon the decisions in the cases of Suryanarayanan versus Anchor Marine Service, 1998 (94) Comp Cas 874, Anandan V. Arivazhagan, 1998 (1) BC 573 and S. Vishwanathan v. United Phosphorous Ltd., 1999 (97) Comp Cas 922, it was held that when the complaint has the initial defect in its sustainability, it cannot be cured by amending the proceedings, inasmuch as section 319 of the Code of Criminal Procedure is not intended for curing infirmity in the proceedings, but only to bring all the culprits before the court. The defect pointed out in the instant case is not of such a serious nature that may not be curable.

As far as the other contention of the learned counsel for the petitioners qua specific knowledge of the authorised signatory who has filed the complaint regarding transaction alleged in the complaint is concerned, the same also merits rejection, inasmuch as in A.C.Narayanan's case (supra), relied upon by learned counsel for the petitioners, it has been held that in a complaint under section 138 of the Act, averments as to the knowledge of complainant required to be made in the complaint and a complaint, through the power of attorney holder, there should be explicit assertion as to the knowledge of the power of attorney holder about the transaction in question, must be specified in the complaint. The power of attorney, who has no knowledge regarding transaction, can not be examined as a witness. This court has no dispute with the above proposition of law

but with due respect, it is mentioned here that the statement of a witness has to be read as a whole and not in isolation. In the instant case, if the statement of Nitish Kumar (CW-1), the attorney holder of the complainant-respondent-company, if read as a whole, the only irresistible conclusion, which can be drawn, is that, this witness had the specific knowledge about the impugned transaction, besides other transactions also in between the petitioners and the respondent-company. Thus, the petitioners cannot be permitted to derive any benefit.

In view of what has been discussed above, the petition is dismissed and the complaint is held to be maintainable. As a sequel to this effect, finding no illegality or perversity in the impugned order dated 18.5.2017 (Annexure P-1) passed by the revisional court and summoning order dated 7.6.2014 (Annexure P-2) passed by the trial court, the same are upheld.

The learned trial court is directed to proceed further with the complaint, in accordance with law.

20.7.2017
VK

(RAMENDRA JAIN)
JUDGE

- | | |
|------------------------------|--------|
| 1. Whether speaking/reasoned | Yes/No |
| 2. Whether Reportable: | Yes/No |