

251/9 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:11.10.2017.

(I) CRM-M-25400-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(II) CRM-M-26160-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(III) CRM-M-26048-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(IV) CRM-M-25406-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(V) CRM-M-25405-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(VI) CRM-M-25404-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(VII) CRM-M-25403-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(VIII) CRM-M-25402-2016(O&M)

Reeta Gulati		...Petitioner
	Versus	
Subhash Gupta		...Respondent

(IX) CRM-M-25401-2016(O&M)

Reeta Gulati

...Petitioner

Versus

Subhash Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.C.Thatai, Advocate
for the petitioner(s).

Mr. Aayush Gupta, Advocate
for the respondent(s).

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of above-mentioned nine petitions.

Prayer in these petitions are for quashing of order dated 10.06.2016 passed by the trial Court in nine criminal complaints filed by Subhash Gupta against the present petitioner-Reeta Gulati, pertaining to nine different cheques.

During the pendency of the complaint, the complainant filed an application for substituting her special Power of Attorney Sh. Jeewan Parbhat Jain to Sahil Gupta. The application filed by the complainant was contested by the petitioner-accused and the trial Court vide order dated 10.06.2016 allowed the application with the following observations:-

“ I have heard learned counsel for both the parties and have gone through the judicial file carefully.

By way of filing the present application the applicant/complainant wants to substitute its old power of attorney holder i.e. Jeewan Parbhat Jain with newly appointed Power of Attorney holder Sh. Sahil Gupta on the ground that the attorney in favour of Sh Jeewan Parbhat Jain was cancelled by him due to the act and behaviour of the attorney. It is settled law that complaint under Section 138 of N.I. Act can be filed or be proceeded

through Special Power of Attorney. Further, the complainant has a right to substitute its attorney to at any stage, if the circumstances of the case demands for the same. In the present case, a doubt has been arise in the mind of complainant regarding the act and conduct of his previous attorney holder, therefore, he has a right to substitute the same with new attorney holder. Further, the case is still at the stage of complainant evidence and the complainant is yet to be cross examined by the defence. No prejudice will going to be caused to the defence, if the application is allowed as the defence will get full opportunity to cross examine the complainant and his witness. However, the dismissal of the application would be detrimental to the interest of the complainant, which will not be in the interest of justice.

Hence, keeping in view of the above facts, the application in hand stands allowed.”

Learned counsel for the petitioner submits that at the stage, when this application was filed, the Statement of CW-1 i.e. Special Power of Attorney of the complainant-Jeewan Prabhat Jain was already recorded and the cross-examination was done by the accused person, however, the same could not be completed. It is further submitted on behalf of the petitioner that by replacing the Special Power of Attorney, the right of the petitioner will be prejudiced as certain admissions have been made by the previous power of attorney.

On the other hand, learned counsel for the respondent has submitted that it is well within the purview of the trial Court to allow such application for replacing the power of attorney. Learned counsel for the respondent has relied upon the judgment of **2002(1) R.C.R. (Criminal) 318**

M/s M.M.T.C. Ltd. Vs. M/s Medchi Chemical & Pharma (P) Ltd. wherein

Hon'ble the Supreme Court has held that in case of a Company, the Court should not insist that a particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings and there may be occasions when different persons can represent the company. It will be open for the complainant-Company to seek permission of the court for sending any other person to represent the company in the Court. It is thus, submitted that the complainant can substitute his Special Power of attorney with another Special Power of Attorney.

After hearing learned counsel for the parties, I find no illegality in the impugned order dated 10.06.2016 so far the right of the complainant to substitute the Special Power of attorney during the pendency of the trial is concerned. However, it is clarified that the complainant shall produce the previous Special Power of Attorney for the purpose of completing the cross-examination so as the evidence of such witness may be read in evidence, failing which, it will be open for the petitioner to summon him for completing cross-examination.

However, it will be open for the respondent-complainant to examine the substituted Special Power of Attorney as well, in support of his case by moving an application before the trial Court.

Accordingly, this petition is disposed of with the aforesaid observations.

(ARVIND SINGH SANGWAN)
JUDGE

11.10.2017

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No