

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

**CRM No.M-529 of 2012 (O&M)
Date of Decision: March 16, 2017**

Punjab State Ware House Corporation

...Petitioner

VERSUS

M/s Karuna Exports Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.D.S.Sukhija, Advocate
for the petitioner.

Mr.Satbir Rathore, Advocate
for respondent No.3

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing the order dated 03.03.2010 passed by learned Sub Divisional Judicial Magistrate, Rajpura and the order dated 17.09.2011 passed by learned Addl. Sessions Judge, Patiala, whereby the complaint filed by the petitioner was not revived.

Notice of motion was issued. Learned counsel for respondent No.3 appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that a complaint was filed by Punjab State Ware House Corporation, Chandigarh against M/s Karuna Exports

Pvt. Ltd. and Directors Nand Lal, Ashok Kumar Sachdeva, Sham Sunder and Suresh Kumar. Learned trial Court on the basis of the preliminary evidence, summoned accused No.1-company M/s Karuna Exports Pvt. Ltd. and accused No.5 Suresh Kumar vide order dated 21.05.2008. During the pendency of the trial, accused No.5-Suresh Kumar, one of the Director of M/s Karuna Exports Pvt. Ltd. died and learned SDJM, Rajpura, in the absence of the complainant, passed the order regarding abating the proceedings and the file was consigned to the record room by stating that no other accused was ordered to be summoned. Aggrieved from the order dated 21.05.2008, the complainant filed criminal revision before this Court, in which following order was passed:-

“XXX.... Counsel for the petitioner has submitted that by death of Suresh Kumar, the entire complaint will not abate. Accused No.1 is a company, therefore, a juristic person. It can be prosecuted through legal representative. Counsel further submits that order was passed in absence of counsel for the complainant. In pursuance of the summoning order, accused has not caused appearance. Therefore, it was incumbent upon the trial Court to afford an opportunity of hearing to the complainant before pronouncing that complaint has abated.

After hearing counsel for the petitioner/complainant, impugned order (Annexure P-3) is set aside. The trial Court shall consider the whole gamut and the controversy involved after hearing counsel for the complainant and pass a fresh order.

With the observations made above, the present revision petition is disposed off.

Then, an application was filed by the complainant for reviving the proceedings in the above-said complaint in view of the order dated 23.03.2009 and for summoning the record and accused persons. Learned SDJM, Rajpura, vide order dated 03.03.2010, dismissed the application after hearing the complainant. A revision was filed and learned Addl.

Sessions Judge, Patiala, vide order dated 17.09.2011, dismissed the same.

Aggrieved from the above-said orders, present petition has been filed.

From the record, first of all, I find that respondent No.3 was not summoned by learned Magistrate in the first order, therefore, he is not a necessary party in the present petition. As per the first summoning order passed by learned Magistrate on the basis of the preliminary evidence, only M/s Karuna Exports Pvt. Ltd. and Suresh Kumar were summoned. Suresh Kumar had died during the pendency of the proceedings. Therefore, the proceedings qua him were abated.

The only question arises that due to the death of Suresh Kumar, whether proceedings are liable to be abated qua M/s Karuna Exports Pvt. Ltd. i.e. the company. The answer is in negative. The complaint is maintainable against the company under Section 138 of the Negotiable Instruments Act. It is not necessary that company must be sued through some person. When the company has been summoned, it is for the company to appear through some authorized person or through an Advocate also, to represent itself in the proceedings. The order passed by the Magistrate abating the proceedings qua accused No.1 also, is, therefore, illegal and has rightly been set aside by this Court.

The point which was to be decided after remanding the matter back, was only whether proceedings qua the company can be abated or company is to face trial but learned SDJM, Rajpura, instead of deciding this point, dismissed the complaint by appreciating the preliminary evidence again and held that no ground for summoning of any of the accused is made out.

The Court discussed the preliminary evidence regarding legal

notice etc. When, the summoning order has already been passed by learned Magistrate vide order dated 21.05.2008 summoning accused No.1-company M/s Karuna Exports Pvt. Ltd. and Suresh Kumar, who has now died, therefore, the Magistrate has no power to review its own order and to again pass the order for the purpose of summoning of the accused.

In view of the above discussion, I find that the order dated 03.03.2010 passed by learned SDJM, Rajpura, dismissing the complaint and the order dated 17.09.2011 passed by learned Addl. Sessions Judge, Patiala, dismissing the revision filed by the petitioner-complainant, are not as per law and the same are set aside. As already held, the summoning order against M/s Karuna Exports Pvt. Ltd. has been passed, which was not challenged by the company and has become final and the proceedings cannot be held as abated against the company due to the death of one of the Directors of the company.

Therefore, finding merit in the present petition, the same is allowed. Learned trial Court is directed to proceed against accused No.1-M/s Karuna Exports Pvt. Ltd., as per law.

March 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No