

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15107 of 2014 (O&M)
Date of decision: 24.01.2018

Shubham Sharma

...Petitioner

Vs.

Nehal Sharma and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Atul Goyal, Advocate for the petitioner.

Mr. B.D. Sharma, Advocate for respondent No. 1.

MAHABIR SINGH SINDHU, J.(ORAL)

The present petition has been filed challenging the impugned order dated 28.1.2014 (P-8) vide which the application (P-7) filed by the petitioner for substitution as complainant/legal representative of Jagdish Chand Sharma (since deceased) in Criminal Complaint No.273/2 of 16.8.2007 was rejected by the Judicial Magistrate 1st Class, Ludhiana as well as the order dated 4.4.2014 (P-9) passed by learned Addl. Sessions Judge, Ludhiana vide which the order passed passed by learned Judicial Magistrate 1st Class. Ludhiana has been affirmed.

It is contended by learned counsel for the petitioner that the impugned order dated 28.01.2014 and 4.4.2014 are not legally sustainable and deserve to be set aside in view of the fact that Nehal Sharma has no right to pursue the complaint made by Jagdish Chand Sharma (since deceased) and the petitioner is the only legal heir on the basis of Will dated 6.6.2011 executed by late Jagdish Chand Sharma.

On the other hand, learned counsel for respondent No. 2 opposed the contention that in the present proceedings, there is no challenge to the legality or validity of the alleged Will and only it is a question of pursuing the complaint filed by father of respondent No. 2 in a cheque bounce case.

Heard both sides and perused the paper book.

It is the case of the petitioner that the Jagdish Chand Sharma (since deceased) filed a complaint under Section 138 of Negotiable Instruments Act (for short, 'the Act') read with Section 420 IPC before the Illaqa Magistrate, Ludhaina against respondent No.2 Aman Sachdeva in the year 2007 for dishonour of cheque No.608230 dated 20.7.2007 amounting to ₹5 lakhs. It is not in dispute that Jagdish Chand Sharma was having one son, namely, Chandan Sharma (since deceased) and one daughter, namely, Nehal Sharma (respondent No.1). During the pendency of the complaint under Section 138 of the Act, Jagdish Chand Sharma died on 6.8.2011. Petitioner Shubham Sharma is claiming his right on the basis of alleged Will executed by Late Jagdish Chand Sharma being closely related as he is the son of the brother of Jagdish Chand Sharma.

After the death of Jagdish Chand Sharma, Suresh Kumar Sharma, the father of the petitioner filed an application for substituting him in place of complainant Jagdish Chand Sharma and the same was allowed by learned trial Court. Thereafter, Seema Sharma, wife of late Jagdish Chand Sharma also filed an application dated 18.9.2012 for permitting her to pursue the complaint on behalf of her husband, but the same was dismissed by learned trial Court vide order dated 4.10.2012. Thereafter,

another application was filed by Nehal Sharma (respondent No.1) on attaining the age of majority to pursue the complaint filed by her father Jagdish Chand Sharma, but the same was also dismissed by learned trial Court on 3.11.2012. Aggrieved against both these orders dated 4.10.2012 and 3.11.2012, Seema Sharma as well as Nehal Sharma (respondent No.1) filed a joint revision petition while challenging the above orders and which was accepted by learned Addl. Sessions Judge, Ludhiana vide order dated 26.2.2013 (P-6), partly to the extent that Nehal Sharma (respondent No.1) be substituted in place of Jagdish Chand Sharma and the operative part of the order reads as under:-

“7. xxxxxx. It is further clarified that the substitution of Nehal Sharma will be merely for the purpose of the complaint under Section 138 of the Negotiable Instruments Act and therefore neither this order nor any of the observations made here in above shall affect the rights of any of the claimants to the estate of deceased Jagdish Chand Sharma, as per the provisions of law relating to the same.

Said order was not challenged at the relevant time and attained finality. Subsequent thereto, the petitioner filed an application for substituting him as legal representative of late Jagdish Chand Sharma which has been dismissed by learned Judicial Magistrate 1st Class, Ludhiana vide order dated 28.01.2014 and criminal revision there against has also been dismissed vide order dated 04.04.2014. Hence, the present petition.

A perusal of the impugned order dated 28.1.2014 clearly reveals that the same has been passed in view of the earlier order dated

26.2.2013 (P-6) passed by learned Addl. Sessions Judge, Ludhiana in which Nehal Sharma has been allowed to be substituted in place of Jagdish Chand Sharma (since deceased). Learned Magistrate has further observed that the criminal Court cannot go into the question as to who is the legal heir of complainant Jagdish Chand Sharma and consequently, Nehal Sharma (Respondent-I) has been allowed for the limited purpose to proceed with the complaint under Section 138 of the Act and thus, reasoning adopted by the learned trial Court is just and fair. Further, a perusal of the impugned order dated 4.4.2014 (P-9) passed by learned Addl. Sessions Judge, Ludhiana reveals that the rights of the parties regarding the estate of the deceased on the basis of natural succession and the Will have been protected by this order and Nehal Sharma was substituted for limited purpose for pursuing the complaint only. Thus, the reasoning adopted by both the learned Courts below are perfectly legal and valid and does not require any interference by way of present petition.

Although the petitioner has also tried to challenge the earlier order dated 26.2.2013 (P-6) passed by learned Addl. Sessions Judge, Ludhiana by contending that there is a Will in favour of the petitioner, but again that is not acceptable in view of the fact that in the present controversy the legality and validity of the Will cannot be tested and Nehal Sharma (Respondent No.1) has rightly been ordered to be substituted/impleaded as complainant in place of her father Jagdish Chand Sharma only for the limited purpose for pursuing the complaint under Section 138 of the Act.

Even otherwise, the order dated 26.02.2013 was not challenged by the petitioner at the relevant time when the joint revision filed by Seema Sharma and respondent No.1 was partly allowed against the orders dated 04.10.2012 and 03.11.2012 in the earlier round and now petitioner is trying to become wiser which is not acceptable as the order dated 26.02.2013 had attained finality.

Resultantly, this Court does not find any infirmity or irregularity in the impugned orders. Consequently, the petition is dismissed.

(MAHABIR SINGH SINDHU)
JUDGE

January 24, 2018
Poonam (II)

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*