

CRM-M-2791-2016 and other connected case

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

**Date of Decision: 19.11.2018
CRM-M-2791-2016**

Sumit Kandhari **...Petitioner**
vs.
M/s Surya Industries and another **..Respondents**

CRM-M-2793-2016

Sumit Kandhari **...Petitioner**
vs.
M/s Surya Industries and another **..Respondents**

CRM-M-2794-2016

Sumit Kandhari **...Petitioner**
vs.
M/s Surya Industries and another **..Respondents**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Argued by: Mr. Veneet Sharma, Advocate
for the petitioner(s).

Mr. Akhilesh Vyas, Advocate
for the respondent (s).

ARVIND SINGH SANGWAN,J

The challenge in these petitions is to the order dated 21.08.2015 (Annexure P2) as well as order dated 18.11.2015 (Annexure P3) passed by the trial Court in three criminal complaints No. 631, 632 and 633 dated 02.02.2010 and order dated 02.01.2016 (Annexure P4) passed by the Revisional Court dismissing the revision petition(s) filed by the petitioner.

Brief facts of the case are that respondent No.1/complainant, through its proprietor Ajay Behl, filed a complaint under Section 138 of the

CRM-M-2791-2016 and other connected case

Negotiable Instruments Act (for short 'N.I.Act'). It is alleged in the complaint that respondent No.1 was proprietorship firm and Ajay Behl, being proprietor and complainant, filed a complaint against the petitioner, as the cheque issued by the petitioner was dishonoured by the bank.

During the pendency of the petitions, aforesaid Ajay Behl, appeared as CW1 and his examination-in-chief was recorded and, thereafter, this witness was cross-examined by the petitioner/accused. Subsequently, complainant-Ajay Behl died and his son Aditya Behl filed an application for substituting him in place of deceased Ajay Behl. The said application was contested by the petitioner/accused, however, the trial Court allowed the application and substitute Aditya Behl as complainant in place of his father-Ajay Behl, vide impugned order dated 21.08.2015.

Thereafter, the trial Court fixed the case for further prosecution evidence and said Aditya Behl appeared as a witness and tendered his affidavit as CW3/A. However, the petitioner raised an objection on the ground that Aditya Behl is not cited as a witness in the list of the witnesses attached with the complaint and no application to lead additional evidence under Section 311 Cr.P.C. was filed by the complainant. The trial Court while recording the said statement over-ruled the objection, by observing that Aditya Behl was impleaded as a complainant only on 21.08.2015 and, therefore, there was no occasion at the time of filing the original complaint to cite him as a witness and once Aditya Behl has been substituted as a complainant, he being the complainant, has a right to appear as a witness.

Thereafter, the petitioner filed revision petition before Revisional Court only challenging the aforesaid order dated 21.08.2015

CRM-M-2791-2016 and other connected case

-3-

allowing Aditya Behl as substitute of Ajay Behl (original proprietor of M/s Surya Industries/complainant). The Revisional Court, while dismissing the criminal revision on 02.01.2016 has observed as under:-

“ I have considered the submissions of learned counsel for the revisionist as well as respondent and have gone through the file. Revisionist has approached this Court aggrieved by the decision of the learned trial Court vide which Aditya Behl is allowed to be substituted as complainant to proceed further with the complaint. During the pendency of the complaint, the complainant Ajay Behl is said to have died on 9.4.2015 leaving behind Smt. Sangeeta Behl Wife, Aditya Behl Son and Meghal Behl daughter. The complainant's son filed an application seeking to prosecute the complaint. There is nothing on record to show that the applicant Aditya Behl is not legal heir of deceased Ajay Behl. Accordingly, Aditya Behl being legal representative of Ajay Behl deceased complainant can be substituted as complainant to proceed further with the complaint. From the above discussion, I do not find any reason to interfere with the order of the learned trial Court.

For all that has been discussed above, it is held that there is no illegality or irregularity in the impugned order of learned trial court and the same is upheld and revision petition is hereby dismissed being without any merits. Lower Court file be returned forthwith alongwith copy of this order and Revision file be consigned to the Record Room.”

Thereafter, the petitioner has filed the present petitions and challenged both the orders passed by the trial Court as well as the order passed by the Revisional Court.

CRM-M-2791-2016 and other connected case

-4-

Counsel for the petitioner has argued that in the cross-examination dated 20.11.2014 of original complainant-Ajay Behl, who appeared as CW1, it is admitted that 02/03 years ago, M/s Surya Industries has closed its business and therefore, the cheques which were issued in favour of M/s Surya Industries, were in discharge of liability against said M/s Surya Industries, the proprietorship firm which has been closed as on today, therefore, the trial Court was not justifying in substituting Aditya Behl in place of deceased Ajay Behl being his son and legal representative.

Learned counsel further argued that while allowing the request for examination of Aditya Behl as CW3, the trial Court has failed to appreciate that neither he was cited as a witness in the complaint nor any application under Section 311 Cr.P.C. was filed to examine him as a witness.

In reply, learned counsel appearing for the respondent(s) has submitted that it is well settled principle of law that in a complaint under Section 138 of the N.I.Act, in the event of death of a complainant, his legal representatives can be impleaded. Learned counsel further argued that since at the time of filing of the complaint, original complainant-Ajay Behl was alive, there was no occasion for his son Aditya Behl to be cited as a witness and it is only after he substituted as a complainant, he has right to appear as a prosecution witness.

Learned counsel for the respondent has relied upon 2007 (2) R.C.R. (Criminal), 155 titled as **Rashida Kamaluddin Syed and another vs. Shaikh Saheblal Mardan (dead) through Lrs. and another**, wherein the

CRM-M-2791-2016 and other connected case

Hon'ble Supreme Court has held as under :-

*“Reference was also made to **Balasaheb K. Thackeray & Anr. v. Venkat @ Babru & Another**, (2006) 5 SCC 530 : JT 2006 (7) SC 44, to which one of us (C.K. Thakker, J.) was a party. In that case, V filed a complaint against the accused in the Court of Judicial Magistrate, First Class for commission of offence punishable under **Section 500** read with **34 IPC**. The complainant, however, died in 2005 during the pendency of the proceedings in this Court. The accused, therefore, made an application under **Section 256** of the Code for dismissal of the complaint on the ground of death of complainant. Legal heirs of the complainant submitted that they would make an application before the Trial Court where the case was pending as the accused had approached this Court against an interim order and the proceedings were pending in the Trial Court.*

*This Court considered the provisions of **Section 495** of the old Code and **Section 302** of the present Code as also Ashwin Nanubhai and Jimmy Jahangir and observed that since the proceedings were pending before the Trial Court, it was not necessary to express any opinion one way or the other. It was observed that if any permission would be sought to continue prosecution by the legal heirs of the deceased, the Court would consider the same in its proper perspective and take an appropriate decision in accordance with law.*

From the above case law, in our opinion, it is clear that on the death of Shaikh Saheblal, the case did not abate. It was, therefore, open to the sons of complainant to apply for continuation of proceedings

CRM-M-2791-2016 and other connected case

against accused persons. By granting such prayer, no illegality has been committed by the courts.”

Counsel for the respondent has further relied upon 1967 AIR (SC) 983 titled as Ashwin Nanubhai Vyas vs. State of Maharashtra and another which is relied upon in Rashida Kamaluddin Syed'case (Supra). He further replied upon 1992 (3) Crimes, 666, titled as T.N. Jayaranjan vs. Jayarajan, wherein the High Court of Kerala has held that during the pendency of a complaint under Section 138 of the N.I. Act, if the complainant died, the son of the complainant may be granted permission to proceed with the complaint.

After hearing learned counsel for the parties, I find no merit in the present petitions for the following reasons:-

(a) In view of the judgment Rashida Kamaluddin Syed'case (Supra) it is well settled that if the complainant died during the pendency of the complaint under Section 138 of the N.I. Act, his legal representative can be substituted as a complainant and, therefore, I find no illegality in the impugned order dated 21.08.2015.

(b) So far as the arguments raised by learned counsel for the petitioner qua the observation of the Court regarding recording of statement of Aditya Behl (CW3) dated 18.11.2015 is concerned, neither the petitioner filed any revision before the Revisional Court challenging the said observation nor the same is illegal in any manner as being a complainant, he has a right to appear as his own witness.

(c) It is not disputed that after cross-examination of deceased-Ajay Behl was deferred, he died and, therefore, the substituted

CRM-M-2791-2016 and other connected case

-7-

complainant has a right to appear as a complainant in his place as the cross-examination of Ajay Behl was not completed.

In view of the above, the present petitions are dismissed.

19.11.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No