

CRR-957 of 2014 (O&M)

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

CRR-957 of 2014 (O&M)
Date of Decision: 26.11.2018

M/s Mahakali Processors Limited and another

....Petitioners

Versus

Punjab State Industrial Development Corporation Limited

....Respondent

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Punjab State Industrial Development Corporation Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Amarjit Singh Virk, Advocate, for the petitioners.
Mr. V.M. Gupta, Advocate,
and Mr. Varun Mittal, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above-titled two revisions are being disposed of having similar facts.

Briefly, respondent filed three different complaints under Section 138 read with Section 141 of the Negotiable Instruments Act (for short the 'Act') against the petitioners for bouncing three different cheques issued by the petitioners.

Trial Court after holding trial, accepted two of the complaints

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of the respondent vide judgments dated 29.07.2011 and 09.12.2011, respectively holding the respondents guilty under Section 138 of the Act. In CRR-958 of 2014 petitioner No.2 was sentenced to undergo imprisonment for one year and pay compensation of ₹3,00,000/- to the respondent-complainant vide order of sentence of even date. In CRR-957 of 2014, petitioners were ordered to undergo rigorous imprisonment for one month and pay compensation of ₹2,50,000/- to respondent-complainant vide order of sentence of even date.

Being aggrieved, petitioners approached First Appellate Court, but remained unsuccessful as their conviction was upheld, but sentence part of the petitioners in CRR-958 of 2014 was reduced from one year to three months and compensation part was kept intact.

Learned counsel for the petitioners *inter alia* contends that initially three complaints were filed by the respondent, out of which two are the subject-matter of these revisions and one was dismissed vide judgment dated 01.11.2011 on the ground that the person, who filed the said complaint was not authorized to file the same. Signatory of both these complaints is the same person. Therefore, Courts below appreciating this fact must have dismissed the complaints of the respondents in these two cases also. No certificate or any resolution authorizing alleged Mr. C.L. Garcha to file complaint, subject-matter of these revisions, was ever produced in the Court. Therefore, in the absence of the same, both the complaints of the respondent were liable to be dismissed. Placing reliance on the judgments in ***State of Punjab v. Madan Lal***, 2009(2) R.C.R. (Criminal) 602 (S.C.) and ***V.K. Bansal v. State of Haryana and others***,

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2013(3) R.C.R.(Criminal) 983 (S.C.), learned counsel prays that sentence of the petitioners may be ordered to run concurrently.

On the other hand, learned counsel for the respondent-complainant vehemently refuting the above submissions of learned counsel for the petitioners, contended that the complaint which was dismissed, there was no specific authorisation to file the same in favour of Mr. C.L. Garcha, but was specifically authorised to file the instant complaints. Therefore, facts and circumstances in these petitions are altogether different from the said complaint.

Having given thoughtful consideration to the rival submissions made by learned counsel for both the sides, this Court finds both the revisions completely devoid of any merit for the reasons to follow.

Undisputedly, third complaint No.251 of 07.11.2001 filed by respondent against the petitioners was dismissed by the trial Court vide judgment dated 01.11.2011 with following observations: -

“Perusal of the sworn-in affidavit of CW-1 Sh. CL Garcha reveals that authorisation from AMD/MD is exhibited on record as Ex.CW1/2. This document consists of three pages and it is a part of office noting. Perusal of this document reveals that it is not having any reference of CW-1 CL Garcha or authorisation to any other person for filing the instant complaint, rather it is only with regard to engagement of counsel for instituting the present complaint. This fact has also been admitted by this witness during his cross examination in the following words: -

“.....It is correct that the notings which I have brought have not mentioned my name or any other person name to file the complaints on record alongwith my affidavit Ex.CW1/2. It is correct that no specific

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directions by name being issued to any of the persons to issue notice or to file the complaint against Mahakali Processors.....I have filed the present complaint only on the basis of Board resolution, even in the list of witnesses filed at the time of filing of complaint, was not mentioned of noting of these files. It is correct that except Board resolution and these notings, I have not brought or have any other document to prove my authority to file the present complaint. It is correct that I have no specific authorisation to file the present complaint.....”

From the above referred extract of the cross examination of CW-1 CL Garcha, it is apparent that he was not having any authorisation from AMD/MD to institute and conduct the present criminal complaint as required in view of resolution Ex.CW1/1. Thus, he cannot be said to be a duly authorised and competent person and complaint filed by an unauthorised person, is not maintainable.

Whereas, in these two complaints facts and circumstances were quite distinguished from the facts of the above complaint case. For ready reference, observation of the trial Court (in CRR-957 of 2014) is reproduced hereunder: -

“The most hotly debated controversy between the parties is whether Sh. C.L. Garcha, DGM (Accounts), Punjab State Industrial Development Corporation Limited, Chandigarh is duly authorised to instituted, perused, deposed and prosecuted the instant complaint against the accused vide resolution dated 24.06.2000 or not? The contentions of the Learned counsel for the accused are that admittedly there is no authorization / resolution on record whereby Sh. C.L. Garcha had sought prior authorisation from the AMD/MD of the complainant corporation in consonance with the resolution dated

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24.06.2000 to instituted, perused, deposed and prosecuted the instant complaint against the accused. Accordingly the instant complaint is not maintainable.

But no cogent, clear and convincing evidence is adduced in support of these contentions. There were merely suggestions to the complainant which have been vehemently denied. Furthermore the accused is not able to rebut the specific & cogent contentions of the complainant that Sh. C.L. Garcha, DGM (Accounts), Punjab State Industrial Development Corporation Limited, Chandigarh is duly authorised to instituted, perused, deposed and prosecuted the instant complaint against the accused vide resolution dated 24.06.2000 and as to the prior authorization from the AMD/MD of the complainant corporation same was duly sought but inadvertently could not be placed on record, though it is on the "Noting file". Furthermore the authorization from the AMD/MD of the complainant corporation is an internal policy matter and accused can not be allowed to take undue advantage of the inadvertent mistake and hyper technicality when the complainant corporation is duly represented through Sh. C.L. Garcha, DGM (Accounts), Punjab State Industrial Development Corporation Limited, Chandigarh, who is well conversant with the fact & circumstance of instant complaint and is duly competent and authorized to institute, pursue and depose qua the instant complaint vide Board Resolution dated 24.06.2000 of the complainant corporation. Furthermore Sh. C.L. Garcha, deposed as to the "acts" done by him in pursuance & exercise of power granted by the instrument i.e. resolution dated 24.06.2000. Furthermore Sh. C.L. Garcha had deposed for the principal in respect of the matter in respect of which he has a personal knowledge and consequently was cross-examined at length.

Furthermore, duly appointed representative Sh. C.L. Garcha is personally aware of the loan/financial transactions with

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*accused ie the accused approached the complainant for the loan facilities, accordingly the Term Loan of ₹1,50,00,000/- and Bridge Loan of ₹50,00,000/- were sanctioned & availed vide Term Loan Agreement ie Ex.CW1/2 & Bridge Loan Agreement ie Ex.CW1/3. As accused failed to maintain its financial discipline with the result the loan account of the accused with the complainant corporation became bad and irregular and in order to discharge/clear its part liability, accused issued cheques in question, which upon presentation got dishonoured & returned unpaid, consequently a legal notice dated 24.04.2002 was issued but of no avail. Furthermore, he was also cross-examined at length. The overwhelming legal position is well settled a authority holder of the complainant having personal knowledge, can be examined for the acts done in pursuance & due exercise of authority. Reliance can be placed on case law cited as **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. 2005(2) SCC 217, Shankar Finance & Investments Vs. State of Andhra Pradesh (2008) 8 SCC 536, Nirmaljit Singh Hoon Vs. State of West Bengal 1973(3) SCC 753, Anirugan Vs. Philip Jacob 2006 (4) 2011** decided on 3 March, 2011 where the scope of an attorney holder 'acting' on behalf of the principal in criminal proceeding was examined. It was observed that an authority holder can depose as to the "acts" done by him in pursuance & exercise of power granted by the instrument. Furthermore he can depose for the principal in respect of the matter in respect of which he has a personal knowledge, consequently be cross-examined." Hence, the plea of the accused that authority holder (Sh. C.L. Garcha) is not competent to depose on behalf the complainant cannot be accepted being as same is not legally tenable or a probable defence in light of the cogent & convincing evidence ie instrument/resolution dated 24.06.2000 passed by the complainant and prior authorization from the AMD/MD of the complainant corporation is an*

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internal matter and not necessarily be placed on record. Furthermore the hyper technical approach is not apt when the authority holder Sh. C.L. Garcha is personally & well conversant with the fact & circumstances of the instant complaint and was examined & cross-examined at length. Moreover it can not be lost sight of the admission of due execution/issuance/drawing of cheques in question and signature thereon by accused.”

Trial Court in complaint case, which is subject-matter of CRR-958 of 2014, observed as under: -

“.....Now coming back to the facts of the instant complaint, it is apparent that this case has taken more than 10 year to reach at the stage of arguments and during this long span of 10 years the corporation never disowned the act of Sh. CL Garcha who was Deputy General Manager, in filing of instant complaint. From time to time the representative of the corporation were also substituted and on retirement of CL Garcha, the complainant corporation examined some other officer, which clearly infers that even in case Sh. CL Garcha was not having any express authority to file the instant complaint, he was having implied authority and by keeping mum the complainant corporation ratified all his acts.

In the light of above said discussion and observation of various High Courts, I am bound to take a contrary view to the view take in earlier complaint and hold that complant has been filed through competent person.

*The another objection raised by learned defence counsel is with regard to examination of unauthorised person to prove the allegations against accused. In this regard, this Court is fortified with the view taken by Hon'ble Andhara Pardesh High Court given in **Waterbase Ltd. case supra** as it has categorically observed as under: -*

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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. It has been held that there may be occasions when different persons can represent the company.”

*The objection regarding no authorisation of SL Bansal also holds no worth as during cross examination of this witness, it has come on record that he has brought the notings dated 18.11.2011 vide which he was authorised to appear as witness in the instant complaint. Said notings were perused by the learned defence counsel but its copy was not placed on record, which clearly infers that the same were sufficient to establish that the witness is duly authorised one. As observed in **Waterbase Ltd. case**, the Court can also not throw the case of complainant merely on the ground that Sh. CL Garcha has not been examined as the Officers of the company may due to variety of reasons might not be able to represent the company at a later stage. In those cases, his successor/some other authorised officer is competent to pursue the matter and appear as witness to prove the allegations against the accused.”*

From the above observations of the trial Court, it is evident that in complaint case No.251 of 07.11.2001, which was dismissed, respondent could not prove authorisation of Mr. C.L. Garcha, whereas in two cases there were ample, cogent and convincing evidence that he was authorised to file the complaints.

Above-said findings of the trial Court have been endorsed by the First Appellate Court qua maintainability of the complaint. This Court also does not find any reason to differ with findings of both the Courts

below inasmuch as Courts are duty bound to impart justice. Their very

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endeavour should be to do justice ignoring the hyper-technicalities. In the instant case, petitioners have not denied issuance of cheque, their signatures thereon and that the bank account does not belong to them. Therefore, respondent is not liable to be non-suited on technical grounds. Accordingly, findings of both the Courts below qua maintainability of the present complaints are upheld.

As far as concurrency of sentences is concerned, the same are ordered to run concurrently in both the revisions. However, compensation shall remain intact. Petitioners shall be bound to pay compensation of ₹2,50,000/- in CRR-957 of 2014 and ₹3,00,000/- in CRR-958 of 2014.

No other point has been raised or arises in these cases.

Copy of this judgment be sent to learned Chief Judicial Magistrate, Chandigarh, to issue arrest warrants of the petitioners to undergo remaining sentence.

Disposed of.

November 26, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No