

CRM-M-21022 of 2018

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

CRM-M-21022 of 2018
Date of Decision: 09.01.2019

Sumesh Chadha

...Petitioner

Versus

M/s Duke Fashions (P) Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Rakesh Bhatia, Advocate, for the petitioner.
Mr. Rahul Rampal, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing complaint No.8194 dated 11.07.2017 (Annexure P-1) under Section 138 of the Negotiable Instruments Act titled as “M/s Duke Fashions v. M/s Chadha Motors and others” and summoning order dated 12.07.2017 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Ludhiana, on the ground that it was necessarily needed for the respondent or its attorney to specifically aver and plead in the complaint that power of attorney holder, who had filed the impugned complaint had special knowledge about the transaction between the parties and had witnessed the same. Since, said averment is not made in the complaint, therefore, impugned complaint is liable to be quashed in view of judgment of the Hon'ble Supreme Court in *Shri G. Kamalakar v. M/s Surana Securities Ltd. and another*, 2013(4) RCR(Criminal) 306.

On the other hand, learned counsel for the respondent-

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complainant drawing attention of this Court towards para No.1 of the impugned complaint (Annexure P-1) and affidavit (Annexure P-3) annexed therewith, urged that above requirement has specifically been fulfilled by the respondent-complainant. Therefore, impugned complaint (Annexure P-1) is well-maintainable and summoning order (Annexure P-2) being legal is not liable to be quashed.

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

It is pertinent to mention here that a person cannot be non-suited on hyper-technical grounds.

This Court has no dispute with the proposition of law laid down by the Hon'ble Supreme Court in *Shri G. Kamalakar* (supra) relied upon by learned counsel for the petitioner that it is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and unless the same is specifically averred, power of attorney holder cannot be examined as a witness in the case, but would like to add that conjoint reading of the complaint (Annexure P-1) and affidavit (Annexure P-3) of Jagdish Sharma, authorised representative of the respondent-complainant makes it abundantly clear that above requirement is specifically fulfilled by the complainant.

For ready reference para No.1 of the complaint and affidavit read as under: -

“That the complainant company is registered under the Indian Company's Act. The memorandum of articles of

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association and registration certificate of the complainant is attached herewith. Sh. Jagdish Sharma Executive Sales is fully conversant with the facts of the case. He authorized by the Board of Directors of the complainant company vide resolution dated 08.07.2017 is authorized to file the present complaint on behalf of the complainant. He is authorized to engage the lawyer and sign the complaint and to depose on behalf of the complainant in the present complaint case.”

Para No.1 of the affidavit reads as under: -

“That I am working in the complainant company as a Executive Sales Accountant for the last 20 years. I am fully conversant with the facts of the case. I have full knowledge of the facts of the case. I prepare the account of the complainant and deal with the customers on behalf of the complainant company.”

From the reading of above, no doubt remains that Jagdish Sharma authorized representative of the respondent-complainant has specifically deposed that he had full knowledge of the case being conversant with the same and has been duly authorized by the Board of Directors vide resolution dated 08.07.2017.

In view of discussion above, petition is dismissed.

January 09, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No