

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

CRM-M-19793-2019 (O&M)
Date of Decision:-13.5.2019

Jai Parkash Singh and another

... Petitioners

Versus

Rajiv Kumar Gupta

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jasdeep Singh Gill, Advocate
for the petitioners.

GURVINDER SINGH GILL, J.

1. The petitioners have approached this Court seeking quashing of complaint case No.8 dated 12.1.2002 and also summoning order dated 14.2.2002 in respect of which the petitioners have been facing trial for offence under Section 138 of Negotiable Instruments Act, 1881.
2. A few facts necessary to notice for disposal of this petition are that respondent-complainant/Rajiv Kumar Gupta instituted a complaint dated 11.01.2002 (Annexure P-1) under Section 138 of the Negotiable Instruments Act against the petitioner and his wife Mrs. Chinta Singh alleging therein that the accused had borrowed a sum of ₹3.5 Lakhs and had issued a cheque dated 28.9.2001 for an amount of ₹3.50 Lakhs in discharge of the said liability but upon

presentation of the same, the same was dishonoured leading to filing of the complaint by the respondent/complainant.

3. The learned counsel for the petitioners while assailing the complaint has submitted that the complaint has been filed on the basis of false allegations and that infact the respondent had laid his hands on a blank cheque signed by the petitioner as security in respect of a loan advanced by partner of respondent to the petitioners and had misused the same by filling up particulars and by presenting the same for encashment. It has further been submitted that although the complaint purports to have been filed through one Subhash Chander, attorney of the complainant, but it had later on transpired that no such person by the said name exists and that in fact Deep Kumar Gupta, father of the complainant, had been appearing in the Court by impersonating as said Subhash Chander. The learned counsel in this context cites a judgment of Hon'ble Supreme Court reported as 2015(1) RCR (Criminal) 823 A.C. Narayanan vs. State of Maharashtra and another.
4. The learned counsel for the petitioners has also assailed the summoning order dated 12.1.2002 (Annexure P-2) while contending that infact as per the summoning order, it was only petitioner No.1-accused No.1 - Jai Parkash who had been summoned and that petitioner No.2 had never been summoned and that in these circumstances the entire proceedings are liable to be quashed.
5. I have considered the aforesaid submissions. Before proceeding to consider the aforesaid submissions, a few facts pertaining to stage of

the case also need to be borne in mind. Some of the relevant dates may be stated in chronological order in the following manner :-

12.01.2002	Complaint under Section 138 Instituted by respondent/complainant-Rajiv Kumar Gupta.
17.05.2002	Notice of accusation was served upon the accused.
04.01.2003	The complainant closed his evidence.
01.02.2003	Statement of accused recorded in terms of Section 313 Cr.P.C.
February, 2003 to 05.06.2013	During this period of 10 years the matter was adjourned for as many as '57 times' for the purpose of recording defence evidence but the accused did not conclude his evidence and ultimately his evidence was closed by order by learned Judicial Magistrate Ist Class, Batala vide order dated 5.6.2013
4.4.2019	Aforesaid order dated 5.6.2013 closing defence evidence of petitioner was challenged by way of filing revision which was dismissed by Additional Sessions Judge on 7.11.2013. Petitioner challenged said order in this Court by way of filing CRM-M-5866-2014, which has recently been dismissed on 4.4.2019

6. From the aforesaid position, it is borne out that the trial of the case has been pending since the last more than 17 years. While the complainant had closed his evidence in 2003, the matter has remained pending thereafter for recording defence evidence. During the interregnum, the petitioner had also approached this Court by way of filing some petitions which stands decided. One such petition i.e. CRM-M No.5866 of 2014 was dismissed recently on 4.4.2019 (Annexure P-9).

7. Now coming to the submissions made on behalf of the petitioner, the first submission regarding the complaint having been filed falsely on the basis of a blank cheque of the petitioners on which the complainant somehow laid his hands is a matter which can only be tested or established during the course of trial and this Court at this stage cannot return a finding on this aspect.

8. As regards the contention of the petitioner that the complaint has not been filed through a duly constituted attorney, it will be apposite to bear in mind the legal position in this regard before discussing the factual matrix of the case. The following questions were referred to a larger Bench of Supreme Court in 2013 (4) RCR (Criminal) 306 A.C. Narayanan vs. State of Maharashtra :-

- (i) Whether a Power of Attorney holder can sign and file a complaint petition behalf of the complainant? Whether the eligibility criteria prescribed by Section 142(a) of NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?
- (ii) Whether a Power of Attorney holder can be varied on oath under Section 200 of the Code?
- (iii) Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint?
- (iv) If the Power of Attorney holder fails to assert explicitly his knowledge in the complaint then can the Power of Attorney holder verify the complaint on oath on such presumption of knowledge?
- (v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the N.I. Act which was introduced by an amendment in the year 2002?

9. The Hon'ble Supreme Court answered the aforesaid questions as follows :-

- “(i) Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.
- (ii) The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.
- (iii) 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 the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.
- (iv) In the light of section 145 of N.I Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.
- (v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.”

10. In the judgment relied upon by the learned counsel for the petitioner i.e. 2015 (1) RCR (Criminal) 823 A.C. Narayanan vs. State of Maharashtra and another, the factual position was different inasmuch as no power of attorney in case of appellant A.C. Narayanan was there on record. The relevant extract indicating the distinct position reads as follows :-

“The appellant has stated that his Advocate conducted search and inspection of the papers and proceedings of the criminal complaint and found that no Power of Attorney was found to be a part of that record. This has not been disputed by the respondents. In that view of the matter and in light of decision of the larger Bench, as referred above, we hold that the Magistrate wrongly took cognizance in the matter and the Court below erred in putting the onus on the appellant rather than the complainant. The aforesaid fact has also been overlooked by the High Court while passing the impugned judgment dated 12th August, 2005.”

11. Similarly, in case of the other appellant namely G. Kamalakar, the facts were distinct inasmuch as there was nothing on record to show that the employee in question was empowered to file the complaint on behalf of the company and that in fact it was only Managing Director and Director who were authorized persons of the company to file complaint. The present case is not such where there is no power of attorney on record or that the evidence has not been given by a person properly authorized in this regard. Rather, in Para 17(iii) of the present petition it has been stated by the petitioner himself that the complaint has been filed by power of attorney holder Subhash Chander and that the power of attorney is Exhibited as Ex.C-1 in the Court file and also that the statement of the attorney Subhash Chander was recorded in preliminary evidence.
12. Though, the learned counsel for the petitioner has vehemently argued that infact there is no person by the name Subhash Chander and that the person who had been appearing before trial Court is infact Deep Chand Gupta but the said matter is also a matter which can be appreciated better by the trial Court, since it is the trial Court

which has had the opportunity of observing as to who had been appearing before it as attorney of complainant.

13. Since there are specific allegations in the complaint to the effect that a cheque issued by the petitioners-accused in discharge of their legal liability had been dishonoured, a *prima facie* case under Section 138 of Negotiable Instruments Act is made out. As such, there is no ground warranting quashing of the complaint at this stage. Whatever defences the petitioners may have, it is always open to the accused to lead evidence at appropriate stage during the course of trial so as to attempt to demolish the case of prosecution-complainant. Needless to mention, the matter would be finally decided only after the accused have been afforded opportunity to lead defence evidence.
14. As regards the contention of the petitioner that the summoning order was passed only qua petitioner No.1 and not qua Petitioner No. 2, a perusal of the summoning order shows that the trial Court while considering the matter regarding summoning of the accused arrayed in the complaint has not referred to them by name and has simply referred to them as “accused”. The summoning order reads as follows :-

“Heard. The present complaint is filed against the accused, who has issued a Cheque No. 217421, Dated 28.09.2001 for a sum of Rs.3,50,000/- with regard to discharge of his liability, but vide Memo Dated 08.12.2001 it was intimated by the payee bank that there are not sufficient funds in the account of the Accused. Then notice was issued by the complainant on

17.12.2001. Even thereafter, the accused failed to make the payment. The present complaint was filed on 12.01.2001 Complainant by examining Subash Chander as PW-1 prima-facie proved that the cheque in question was issued by the Accused which was returned unpaid for want of sufficient funds. Even after notice, accused failed to discharge his liability towards the cheques in question. Therefore, I find sufficient grounds to proceed against the accused u/s 138 of Negotiable Instrument Act. Let he be summoned on filing PF, copy of complaint for 01.11.2002.”

15. Although the learned counsel vehemently argued and referred to the last line of the summoning order where it is written as 'let he be summoned.....' to contend that the word 'he' refers to petitioner No.1-Jai Parkash only and not to petitioner No.2-Mrs.Chinta Singh but apparently it is a clerical mistake and instead of 'they' the word 'he' had been typed whereas infact a perusal of the entire summoning order does not show that accused No.2/petitioner No.2 was not intended to be summoned. In the entire summoning order, the trial Court has referred to the petitioners as 'accused'. In any case, after the summoning order, notice of the accusation was served on both the petitioners and they have been appearing before the trial Court and they never ever raised this issue at any stage. It would not lie in the mouth of the petitioners to raise this issue at this belated a stage when the trial is at its fag end and it is more than 17 years back that the complaint was filed and even the summoning order was passed more than 17 years back.

16. The petition is sans merit and is dismissed.

(GURVINDER SINGH GILL)
JUDGE

13.5.2019
kamal

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No