

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-49262-2017

Date of Decision:02.07.2019

Sumesh Chadha

...Petitioner

Versus

Ashwyn Singhania

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rakesh Bhatia, Advocate for the petitioner.
Mr.Yogesh Goel, Advocate for the respondent.

ANIL KSHETARPAL, J.

Quashing of criminal complaint filed under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act of 1881') and summoning order passed therein are sought on two grounds i.e. (i) In the criminal complaint, which has been filed through power of attorney by the complainant, necessary averments/assertions as required and laid down by the larger Bench of the Hon'ble Supreme Court in the case of *A.C.Narayanan Vs State of Maharashtra and another, 2013 (4) RCR (Criminal) 306*, are conspicuously absent and (ii) in view of the order passed on 11.07.2018, respondent cannot be permitted to argue that the complaint and the summoning order as such are maintainable.

In the present case, criminal complaint under Section 138 of the Act of 1881 was filed by the respondent (complainant in the criminal complaint) through his father as special attorney. In para 1 of the complaint, it was pleaded as under:-

“That the complainant is a proprietor of M/s Sunshime Sales Corporation, 635, Industrial Area-B, Ludhiana. The complainant has appointed his father Shri Ankur Singhania as his special attorney to file the complaint and to do all acts relating to the present case. Shri Ankur Singhania is also well conversant with the facts of the present case & able to do all acts relating to this complaint. Thus, the complaint is filed through the competent person.”

After filing the complaint on behalf of the complainant, his special attorney who is father of complainant appeared in evidence and tendered his affidavit in preliminary evidence, para 1 whereof is extracted as under:-

“.....The deponent is also well conversant with the facts of the present case & able to do all acts relating to this complaint. Thus, the complaint is filed through the competent person. The special power of attorney is Ex.C-1.”

Learned counsel for the petitioner, while referring to a larger Bench judgment of the Hon'ble Supreme Court in the case of **A.C.Narayanan** (supra), contends that a complaint filed through attorney although maintainable, however, the complainant is required to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint. Hence, he submits that pleadings and the preliminary evidence do not fulfill the requirements of law and, therefore, the complaint is liable to be quashed. Leaned counsel has strongly relied upon para 26 of the judgment passed by the Hon'ble Supreme Court in the case of **A.C.Narayanan** (supra), which is extracted as under:-

“While holding that there is no serious conflict between

the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

(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.”

On the other hand, learned counsel appearing for the

respondent-complainant has submitted that in the criminal complaint, necessary assertions/averments/pleadings have been made and, therefore, there is no substance in the argument of learned counsel for the petitioner.

This Court, with the able assistance of learned counsel for the parties, has carefully gone through the pleadings, evidence and the judgment passed by the Hon'ble Supreme Court in the case of **A.C.Narayanan** (supra).

In the considered view of this Court, there is no substance in the arguments of learned counsel for the petitioner. The Hon'ble Supreme Court, while answering question No.(iii) as framed, has held that a criminal complaint under Section 138 of the Act of 1881 filed through power of attorney is maintainable, however, complainant is required to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint.

A careful perusal of para 1 of the complaint extracted above, it is apparent that father of the complainant is a special attorney holder. The complainant is proprietor of a proprietary firm. It has been specifically pleaded that Shri Ankur Singhania, special power of attorney holder, is also well conversant with the facts of the present case and able to do all acts relating to this complaint. Still further, when he led pre charge evidence, the same facts were stated. The requirement of law is only to make specific assertion explicitly. The Hon'ble Supreme Court has not laid down that the language of the complaint has to be in a particular format. The Court, while examining the requirement, would see and analyse as to whether the pleading as required under law are sufficient or not in the facts of each case.

As noted above, power of attorney holder is father of the sole proprietor of the Firm, who has pleaded that he is well conversant with the facts of the present case. Obviously, the facts of the present case refer to the transaction between the complainant and the accused which includes issuance of cheque, dishonoured thereof and nature of transaction between the parties. Hence, there is no substance in the argument of learned counsel for the petitioner. In any case, the petitioner-accused has invoked inherent power of High Court under Section 482 of the Code of Criminal Procedure. While exercising such power, High Court has to be very careful because once a petition is allowed and the complaint is quashed at the threshold, the complainant loses opportunity to prove its case. Such jurisdiction is to be exercised sparingly and carefully. The accused-petitioner at the time of cross-examination of the witnesses including power of attorney holder shall be entitled to challenge the correctness of the assertions made in the complaint. At this stage, it would not be appropriate for the Court to exercise inherent jurisdiction.

Now let us examine second argument of learned counsel for the petitioner with reference to the order dated 11.07.2018, which is extracted as under:-

“Based upon judgment passed in A.C. Narayanan vs. State of Maharashtra and another, 2013(4) RCR(Criminal) 306, learned counsel for the petitioner reiterates his submission that the power of attorney holder of the complainant could not have deposed in support of the complaint without specifically stating that he was aware of the transaction/witnessed the transaction and, thus, was competent to depose in favour of the complaint. Learned counsel for the

respondent submits that prior to filing the present petition for quashing, the petitioner was required to move an application for recall of the order of summoning/discharge. However, he is unable to support his arguments by any law. He also submits that he is willing to give concession that the impugned order be quashed and the matter be remanded with a rider that the complainant himself appears before the trial Court to depose in support of the complaint. Learned counsel for the petitioner prays for time to seek instructions. Adjourned to 17.08.2018.”

Learned counsel for the petitioner submits that on 11.07.2018 learned counsel for the respondent had conceded to the fact that such a complaint through power of attorney was not maintainable and that is why he sought time to seek instructions. He specifically conceded to the effect that the summoning order be quashed while giving opportunity to the complainant himself appear in preliminary evidence.

This Court has considered the submission.

No doubt on 11.7.2018 as contended by the learned counsel for the petitioner, this fact is recorded but the case was not disposed of. On that date, learned counsel for the petitioner-accused had sought time to seek instructions. In such circumstances, such order is only interim order passed by the court. Hence such order cannot be permitted to be used against the complainant-respondent by applying principle of estoppel. What has been noticed by the Court is only a submission of learned counsel that he is willing to give concession to that effect. However, it was for the petitioner to accept that concession and get the matter disposed of. Once that has not been done, the complainant-respondent cannot be held to be bound by the aforesaid statement. In any case the aforesaid statement/concession is only

with regard to quashing of the summoning order and for examination of the complainant himself. The effect of such statement would be examined by the court at the time of final decision of the case by the trial court. It is well settled that concession/admission of a counsel at the time of arguments is to be categoric, specific, explicitly and unambiguous. On careful reading of the order reproduced, this Court does not find that the respondent-complainant can be bound to accept that position at the time of final arguments.

In view thereof, this Court does not find any substance in the petition and the same is accordingly dismissed. However, the observations made by this Court, while passing the order, shall not be construed as a final expression of opinion on the merits of the case and the trial court would proceed to decide the case on merits independently.

02.07.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No