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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 510/2017**

DR.JANGBAHADUR SINGH

..... Petitioner

Through

Mr. Vikas Pahwa, Sr. Advocate
with Mr. Naaren Sarvaria and Ms.
Aashita Khanna, Advocates

versus

STATE & ANR.

..... Respondents

Through

Ms. Neelam Sharma, APP for the
State
Mr. Tanmaya Mehta, Mr. Amulya
Bedi, Mr. Sourabh Gupta and Mr.
Puneet, Advocates for R-2
SI Sanjay Kumar, P. S.
Barakhamba Road, New Delhi

And

+ **CRL.M.C. 864/2017**

JASMOHAN SINGH

..... Petitioner

Through

Mr. Tanmaya Mehta, Mr. Amulya
Bedi, Mr. Sourabh Gupta and Mr.
Puneet, Advocates

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through

Ms. Neelam Sharma, APP for the
State
SI Sanjay Kumar, P. S.
Barakhamba Road, New Delhi
Mr. Vikas Pahwa, Sr. Advocate
with Mr. Naaren Sarvaria and Ms.
Aashita Khanna, Advocates for R-
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CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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24.01.2019

1. Revisional Court vide order of 7th January, 2017 has set aside trial court's order of 28th March, 2016 and has remanded back the matter to the trial court in view of repudiation of '*special power of attorney*' in question by Attorney Holder- *Raman Pal Singh Khalsa*.
2. The challenge is to Revisional Court's order of 7th January, 2017 by the complainant as well as by the proposed accused, by way of two separate petitions, which have been heard together and with the consent of learned counsel for the parties, these are being disposed of by this common order.
3. Learned counsel for the complainant submits that the power of attorney in favour of Raman Pal Singh Khalsa was withdrawn on 12th March, 2016 and proceedings prior thereto, were valid and the Revisional Court has illegally set aside the order under Section 156 (3) Cr.P.C. as the attorney of Raman Pal Singh Khalsa was valid till 15th March, 2016.
4. It is pointed out that trial court had reserved the order on the application under Section 156 (3) Cr.P.C. on 27th February, 2016 and at that time power of attorney was subsisting and there was no basis to set aside the trial court order. So, it is submitted that the revisional order ought to be set aside and trial court order deserves to be restored. Reliance is placed upon Supreme Court's decision in '*A.C. Narayanan vs. State of Maharashtra & Another, (2014) 11 SCC 790*' to submit that the complainant can file the complaint through '*Power of Attorney*' and power of attorney holder can depose and verify on oath before the court, if the power of attorney holder has witnessed the transaction or possesses due knowledge regarding the said transaction.

5. On the contrary, learned counsel for the second respondent-*proposed accused* submits that although orders on the application under Section 156 (3) Cr.P.C. were reserved on 27th February, 2016 but they were pronounced on 28th March, 2016 and during the intervening period, there was no valid '*power of attorney*' as Raman Pal Singh Khalsa had withdrawn his '*power of attorney*' on 12th March, 2016 and this fact was not brought to the notice of the Court by the complainant.

6. Learned counsel for second respondent further submits that the impugned order needs to be clarified to the extent that there has to be explicit assertion as to the knowledge of the attorney holder about the transaction in question and ought to be so specified in the complaint, which is not so in the instant case and so the complaint filed by the power of attorney is not maintainable. Reliance is placed upon the Supreme Court's decision in '*Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Others, (2015) 6 SCC 287*' to submit that affidavit in support of the complaint/application under Section 156 (3) Cr.P.C. is necessarily required, as judicial notice is taken of the fact that such like application are being filed in a routine manner and in the instant case, the trial court has passed the order in the year 2016 and so, the trial court was required to take an affidavit from the complainant before passing any order under Section 156 (3) Cr.P.C. It is pointed out that the complainant is not giving his specimen signature for comparison to test the forgery allegation levelled against the proposed accused.

7. It is a matter of record that after the withdrawal of special power of attorney by Raman Pal Singh Khalsa, special power of attorney was placed on record by complainant's Nephew-*Gurmeet Singh* on 20th May,

2016 and complaint in question is accompanied by affidavit of erstwhile attorney holder.

8. In rebuttal, senior counsel for the complainant submits that the decision in *Priynaka Srivsatava (supra)* has prospective application.

9. Upon hearing and on perusal of impugned order as well as trial court order, material on record and decisions cited, I find that a three Judge Bench decision of Supreme Court in *A.C. Narayanan (supra)* has clarified that a complaint by a power of attorney holder is maintainable provided that the power of attorney holder has personal knowledge of transaction in question. An exception to the above enunciation is that the power of attorney holder of complainant, who does not have personal knowledge of the transaction in question cannot be examined. However, the Supreme Court in *A.C. Narayanan versus State of Maharashtra & Anr.* (2015)12 SCC 203 has reiterated that an explicit assertion of personal knowledge of power of attorney holder about the transaction in question must be specified in the complaint.

10. In light of above referred authoritative pronouncement of Supreme Court in *A.C. Narayanan (supra)*, this court has scrutinized the complaint in question and thereupon, it transpire that the attorney of complainant has vaguely said that he is well conversant with the facts and circumstances of the complaint. It has not been stated in so many words that the attorney holder of complaint has personal knowledge about the transaction in question, as reflected in the said complaint. It is relevant to note that neither in the power of attorney of 14th August, 2013 nor in the second power of attorney of 6th May, 2016 it has been averred that the

attorney holder has the personal knowledge about the transaction in question as reflected in the said complaint.

11. Since this Court is of the considered view that the complaint in question by its attorney holder-*Raman Pal Singh Khalsa* was not validly instituted for want of positive assertion in it regarding attorney holder having personal knowledge of the transaction in question, therefore, the complaint in question by the subsequent power of attorney holder cannot be pursued. Consequently, not only the impugned orders but even the complaint in question cannot be maintained. Accordingly, aforesaid complaint and impugned order are hereby quashed with liberty to petitioner to file a fresh complaint in respect of the transaction in question on basis of a valid power of attorney.

12. With the aforesaid directions, both these petitions are accordingly disposed of.

**SUNIL GAUR
(JUDGE)**

JANUARY 24, 2019

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