

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-4544 of 2022
Date of decision : 04.02.2022

Parvin Kumar

.....Petitioner

VERSUS

Iqbal Singh Sethi

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr.Dinesh Nagar, Advocate, for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

(1) This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

(2) By means of the instant petition, learned counsel assails the order dated 11.07.2019 passed by the Judicial Magistrate (1st Class), Chandigarh, dismissing the application submitted on behalf of the petitioner before the Court to disallow Sh. R.D.Vinayak, Advocate, appearing on behalf of respondent-complainant to cross-examine the defence witnesses. A further challenge is raised to the order date 2nd December, 2021, whereby, the learned Additional Sessions Judge, Chandigarh, has dismissed the revision petition filed by the petitioner against the said order of the Judicial Magistrate.

(3) Learned counsel for the petitioner submits that the title of the power of attorney executed in favour of Sh. R.D.Vinayak, Advocate, who was appearing on behalf of the complainant did not authorize Sh. R.D.Vinayak, Advocate, to conduct the instant complaint before the trial

his representative capacity and as holder of power of attorney on behalf of Iqbal Singh were without any valid authority. It is further submitted that the learned trial Court has wrongly allowed the complainant to place on record a fresh power of attorney. As a matter of fact, the submission of any fresh power of attorney was not valid and did not confer any valid authorization in favour of Sh. R.D.Vinayak, Advocate, and would thus, vitiate the entire proceedings.

(4) A perusal of the order passed by the Court below shows that the power of attorney dated 28.05.2017 had been placed on the record of the case wherein the title was mentioned as Iqbal Singh Sethi Vs. Ashwani Gupta instead of Iqbal Singh Sethi Vs. Parvin Kumar. It has further been noticed by the revisional Court as under:

“7. Perusal of the summoned file shows that impugned complaint under Section 138 of N.I. Act has been instituted on 25.08.2017 Complainant appeared before the ld. Trial court alongwith his counsel Sh. R.D.Vinayak, Advocate. Thereafter accused was summoned and the prosecution witnesses were examined by complainant alongwith his counsel Sh.R.D.Vinayak, Advocate. Statement of accused was recorded under Section 313 Cr.P.C. and case was posted for defence evidence and during said proceedings complainant was represented through counsel Sh. R.D.Vinayak, Advocate. Accused filed an application on 11.07.2019 as not to allow Sh. R.D.Vinayak, Advocate, to cross-examine defence witnesses. Said application was filed on the ground that Sh. R.D.Vinayak, Advocate, is not authorised to appear on behalf of the complainant on the ground that he has filed power of attorney on 22.08.2017 carrying title of case as “Iqbal Singh Sethi vs. Ashwani Gupta.” Present complaint case is titled as “Iqbal Singh Sethi Vs. Parvin Kumar”. It has thus been contended that in fact complainant had never authorised Sh.

R.D.Vinayak, Advocate, to appear as his counsel in the present case.

8. *Perusal of the file shows that complainant had been attending present proceedings alongwith his counsel Sh. R.D.Vinayak, Advocate. It is criminal complaint and complainant is required to attend every date of hearing. Thus on each and every date of hearing complainant with his counsel Sh. R.D.Vinayak, Advocate, appeared and proceedings were conducted by Sh.R.D.Vinayak, Advocate, in presence of complainant with counsel of complainant. On 11.07.2019 itself complainant had suffered statement that:*

“In the title of the case typed in the power of attorney, the name of the accused has been printed as Ashwani Gupta by mistake. The power of attorney pertains to the case title as Iqbal Singh Sethi Versus Parvin Kumar. It is just an inadvertent typographical error. That I had authorized him to be my counsel since 22.08.2017.”

9. *Thus complainant clarified that in the power of attorney the name of accused has been misprinted as Ashwani Gupta due to a typographical mistake and that the said power of attorney dated 22.08.2017 given by him to Sh. R.D.Vinayak, Advocate pertains to the present case only. Thus it is not the case of complainant that he has not authorised Sh. R.D.Vinayak, Advocate, to appear on his behalf in the present case. It is not denied that on 11.07.2019 itself another power of attorney mentioning the correct name of the accused has also been filed. Parties engages a counsel to appear on its behalf and as token of proof Vakalatnama signed by the party in favour of his counsel is placed on record. Present complaint has been instituted on 22.08.2017. Power of attorney/Vakalatnama executed by complainant in favour of his counsel is on record since then. Sh. R.D.Vinayak, Advocate, is appearing alongwith the complainant in the present case and has carried out almost entire trial on behalf of his client complainant Iqbal Singh Sethi. Complainant is*

contending that from the date of institution of the present complaint till the filing of fresh Vakalatnama on 11.07.2019 he has engaged Sh. R.D.Vinayak, Advocate, to appear on his behalf in the present complaint case. Thus, it does not lie in the mouth of accused to contend that Sh. R.D.Vinayak, Advocate, has not been authorised by the complainant to prosecute complaint. In case in the original power of attorney dated 22.08.2017 name of the accused has been mentioned as Ashwani Gupta instead of Revisionist-accused Parvin Kumar then the said fact also stands clarified by complainant by making statement on 11.07.2019 that it is just a typographical mistake and he has authorized Sh. R.D.Vinayak, Advocate, to carry out the present case. A fresh power of attorney carrying the name of revisionist-accused also stands filed. It has not been explained what kind of prejudice has been suffered by accused in case name of accused has been wrongly mentioned in the power of attorney. It is the prerogative of the complainant to engage his counsel. Accordingly he has engaged Sh. R.D.Vinayak, Advocate, as his counsel and trial has been carried out by Sh. R.D.Vinayak, Advocate. So to contend that Sh. R.D.Vinayak, Advocate, has no locus standi to conduct the cross-examination of the defence witnesses has no reason to stand.”

(5) A perusal of the order passed by the Revisional Authority shows that the complainant had been approving of the representation through Sh.R.D.Vinayak, Advocate, on every date and had also suffered a statement on 11.07.2019 ratifying all acts done by Sh.R.D.Vinayak, Advocate, since 22th August, 2017.

(6) 'Ratification' has been explained by the Hon'ble Supreme Court in the judgment of ***Maharashtra State Mining Corpn. Vs. Sunil (2006) 5 SCC 96*** as under :

“7. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim 'Ratihabitio priori mandato aequiparatur' namely 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore ratification assumes an invalid act which is retrospectively validated.

(9)The same view has been expressed in several cases in other jurisdictions. Thus in Hartman vs. Hornsby it was said 'Ratification' in the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorizedly performed in the first instance.”

(7) The presence of the complainant-respondent along with the Sh.R.D.Vinayak, Advocate, during the proceedings of the case itself is an approval and ratification of the acts done by Sh.R.D.Vinayak, Advocate, for and on behalf of complainant-Iqbal Singh Sethi. Such approval is further cemented by the statement made by complainant-Iqbal Singh Sethi.

(8) The argument of the petitioner would be liable to be rejected also for the reason that Chapter XXXV of the Code of Criminal Procedure deals with irregular proceedings. Section 461 Cr.P.C talks about the irregularities that vitiate the proceedings. Evidently, a typographically error in the power of attorney has not been incorporated as an irregularity that would vitiate the proceedings. It would thus, not be possible to accept the contention of the petitioner that even though the proceedings are not deemed to be vitiated under Section 461 of the Cr.P.C, yet, the same should be applied. Such an argument would amount to legislating and reading into the statute something that has not been provided. It would further be pertinent to make a reference to Section 465 of the Code of Criminal

Procedure 1973 and the same is extracted as under:-

“465. Finding or sentence when reversible by reason of error, omission irregularity.-

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

(9) The aforesaid provision validates and waives or condones any other irregularity except when in the opinion of the Court, failure of justice has occasioned thereby. Hence, the guiding principles for a Court to examine any alleged irregularity is as to whether such alleged irregularity has occasioned any failure of justice or not. The petitioner has failed to demonstrate any failure of justice on account of the witnesses having been permitted to be cross-examined by Sh.R.D.Vinayak, Advocate, on behalf of the complainant-Iqbal Singh Sethi. Any such irregularity could have at best given any right to the complainant to plead failure of justice, however, in the instant case such a plea shall not be available even to the complainant as the complainant had been appearing on all such dates

alongwith the advocate and had even ratified all acts done by Sh.R.D.Vinayak, Advocate. In any case, it is not in dispute that the power of attorney placed on record of the case file was duly executed by the complainant-respondent Iqbal Singh Sethi and apparently it appears that an error/omission occurred while mentioning the case title. The procedural law is handmaids of justice and it is with the said object and purpose that the power has been vested in a criminal Court under Section 465 Cr.P.C., to examine any order on the parameters as to whether such an order advances or occasions failure of justice. The petitioner has failed to demonstrate the resultant failure of justice that has so arisen on account of the proceedings having been undertaken by Sh.R.D.Vinayak, Advocate, along with Iqbal Singh Sethi-complainant.

(10) Further, in the matter of ***Bank of Nova Scotia Vs. RPG Transmission Limited, ILR (2002) II Delhi***, the Hon'ble Delhi High Court had observed in a matter where defect in the power of attorney executed in favour of the advocate was pointed out as under:-

“1. Two questions arise for consideration. Firstly, whether the Power of Attorney executed in favor of the person who has signed the petition conforms with the requirements of law and if found not to be so, what are the proper and appropriate orders that should be passed. Secondly, whether the Company Court should entertain a winding-up petition despite the fact that the petitioning creditor has already instituted proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the RDB Act').

4..... The proper course which should be adopted by the Court in cases where the Power of Attorney in favor of the signatory to the plaint/petition is found to be inadequate, is to afford an opportunity to the Petitioner to

rectify the defect or to cure it by any other means including ratification of the action already taken. The objection is rejected.”

(11) I find myself in agreement with the judgment of the Delhi High Court as regards removal of the defect in the power of attorney and hold that any such defect in power of attorney as may be noticed or brought before the Court is a curable defect. It does not vitiate the proceedings and would not occasion failure of justice. In view of the above, the present petition is dismissed being without any merit.

04.02.2022
anil

(VINOD S. BHARDWAJ)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>