

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

**CRM-M-9282-2020
Date of Decision:05.05.2022**

M/s Ferrous Township Pvt. Ltd. and others

... Petitioners

Versus

Bharat Bhushan Bhardwaj through his LR's

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Gaurav Chopra, Senior Advocate with
Mr. Dhruv Sood, Advocate
for the petitioners.

Mr. Himanshu Raj, Advocate
for the respondent.

KARAMJIT SINGH, J. (Oral)

The present petition has been filed by the petitioners/accused seeking quashing of order dated 15.2.2020 (Annexure P-9) passed by learned Judicial Magistrate Ist Class, Gurugram in criminal complaint titled as Bharat Bhushan Bhardwaj vs. M/s Ferrous Township Pvt. Ltd. and others under Section 138 of Negotiable Instruments Act (in short 'NI Act').

Brief facts of the case are that Bharat Bhushan Bhardwaj through his Attorney (daughter) Ms. Seema Sobti filed aforesaid criminal complaint under Section 138 NI Act against the present petitioners with

regard to dishonour of cheque. During the preliminary evidence, Ms. Seema Sobti being the attorney of her father Bharat Bhushan Bhardwaj tendered her affidavit and she also proved concerned power of attorney Ex.CW-1/2. On completion of the preliminary evidence the petitioners were summoned and they put in their appearance and notice of accusation was served to them to which they did not plead guilty. The application moved by the petitioners under Section 145(2) of NI Act was allowed by the trial Court and the case was fixed for 20.9.2019 for cross-examination of CW-1, Ms. Seema Sobti. Thereafter CW-1 Ms. Seema Sobti was partly cross-examined by the petitioners, however, before conclusion of her cross-examination, Bharat Bhushan Bhardwaj died on 10.12.2019. Thereafter, Ms. Seema Sobti and other legal heirs of the deceased filed application under Section 302 Cr.P.C. for their impleadment as LRs of Bharat Bhushan Bhardwaj. The said application was not opposed by the petitioners and accordingly the same was allowed by the trial Court vide order dated 1.2.2020 (Annexure P-6). Further the amended memo of parties was filed. Thereafter when CW-1 Ms. Seema Sobti was tendered for her further cross-examination, the petitioners raised objection in writing regarding the same vide application Annexure P-8. The trial Court disposed of the said objection, after hearing both the parties vide impugned order dated 15.2.2020. The operative part of the same reads as follows:-

“Perusal of record shows that the complainant Sh. Bharat Bhusan Bhardwaj was expired on 10.12.2019 and on 01.02.2020 this Court impleaded his legal representative on the case file. Today the amended memo of parties is also filed on record but learned defence counsel objected on further cross-examination of

CW-1 on the reason that her cross-examination was being conducted as an SPA holder of complainant but now as she herself is the complainant so her capacity has changed. There is no doubt that now the alleged SPA is not in force and M.s Seema Sobti has become one of the legal representative of late Sh. Bharat Bhusan Bhardwaj but there is also no objection on this fact that she is the same person who was representing late Sh. Bharat Bhusan Bhardwaj on the present case file since inception and even the present complaint instituted through her only which is also corroborated by para No.2 of the present complaint which shows that she is the daughter of the complainant and well conversant of the facts of the present matter. When the person is the same having the same knowledge of facts then in my considered view there is no requirement to reverse the clock and it would suffice if the examination-in-chief as well as the cross-examination (conducted already) is adopted by Ms. Seema Sobti as a legal representative of complainant on the case file. That will also help this Court to cut short the unnecessary proceeding which is already done on the case file. Hence in the light of the above the present application stands disposed of with the direction to CW-1 Ms. Seema Sobti to adopt her evidence before the Court as a legal representative of complainant Late Sh. Bharat Bhusan Bhardwaj.”

The aforesaid order dated 15.02.2020 has been challenged by the petitioners/accused, in the present petition.

The counsel for the petitioners has argued that the impugned order is illegal. The counsel further contended that with the death of Bharat Bhushan Bhardwaj, a power of attorney executed by him in the name of his daughter Ms. Seema Sobti, came to an end. The counsel further contended

that it being so, the direction given by the trial court to Ms. Seema Sobti, CW1, to adopt her earlier evidence recorded by the Court even as a legal representative of complainant late Bharat Bhushan Bhardwaj, is meaningless and as such, is liable to be set aside.

On the other hand, the counsel for the respondents submitted that the impugned order is legal and valid. The counsel further contended that the trial Court while assigning reasons, gave direction to Ms. Seema Sobti, to adopt her earlier evidence recorded by the Court, even after the death of the 'Principal', she being legal representative of the deceased.

I have considered the submissions made by counsel for the parties.

Admittedly, the aforesaid complaint under Section 138 of N.I Act was filed by Bharat Bhushan Bhardwaj through his attorney (daughter) Ms. Seema Sobti. The Hon'ble Supreme Court in *AC Narayanan Vs. State of Maharashtra and another (2015) 12 SCC 203* has clearly held that a complaint filed by the Power of attorney would be maintainable in law. Further, the Hon'ble Supreme Court in Criminal Appeal No.237 of 2012, *SK Tamisuddin Versus Joy Joseph Creado and another decided on 25.09.2018*, held that in a criminal complaint filed by the complainant through special power of attorney holder, on death of complainant, the proceedings to continue on the application/request of special power of attorney holder in his capacity as legal heir of deceased (complainant), he being the son of the deceased.

Admittedly, Ms. Seema Sobti, was earlier examined-in-chief as well as partly cross examined being power of attorney holder of her father Bharat Bhushan Bhardwaj. Undisputedly, Bharat Bhushan Bhardwaj died on

10.12.2019 and aforesaid examination-in-chief and part cross examination was conducted prior to death of Bharat Bhushan Bhardwaj. It is settled proposition that with the death of Bharat Bhushan Bhardwaj, the aforesaid power of attorney as well as the agency was terminated.

Admittedly, on the death of Bharat Bhushan Bhardwaj, Ms. Seema Sobti, her mother and brother were impleaded as LR's of deceased Bharat Bhushan Bhardwaj.

Earlier Ms. Seema Sobti, was examined-in-chief and partly cross examined, she being attorney of her father. However, the said status of Ms. Seema Sobti has come to an end with the death of her father. If now she is allowed to be further cross examined, in the same capacity i.e. being attorney of Bharat Bhushan Bhardwaj, it would amount to anomalous situation, as now she is not attorney of her father.

Also it makes no sense that Ms. Seema Sobti be now further cross examined being legal heir of Bharat Bhushan Bhardwaj, the reason being she was never examined-in-chief, in the said capacity.

In view of the above, in order to avoid both the above stated anomalous situations, the trial Court should have asked Ms. Seema Sobti, to furnish her additional affidavit in continuity of her first affidavit, as her examination-in-chief, so that she could be cross-examined regarding pre and post death situations as have already been discussed above.

For the foregoing reasons, this Court is of the view the direction given by the trial Court to Ms. Seema Sobti to adopt her evidence already recorded by the Court, as a legal representative of complainant Bharat Bhushan

Bhardwaj, is not suffice. Accordingly, the present petition is hereby disposed of and Ms. Seema Sobti is allowed to furnish her additional affidavit in continuity to her earlier affidavit (examination-in-chief) and opportunity be afforded to the petitioners to further cross examine her with regard to both the said affidavits.

05.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No