

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 6992 of 2018
Date of Decision: 27.4.2022**

Maghav Gupta

.....Petitioner

Versus

Vidhu Gupta

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Avtar S. Khinda, Advocate
for the petitioner.

Mr. H.S.Randhawa, Advocate for
Mr. P.S.Ahluwalia, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. In complaint titled *Vidhu Gupta versus Maghav Gupta and another* bearing No. 31 of 2016, after preliminary evidence becoming recorded, the learned trial Magistrate issued a summoning order, upon the petitioner herein. The afore made summoning order, upon the petitioner, is challenged through the instant petition. The challenge, as made to the summoning order, is grooved in the factum that the complaint (supra), being completely mis-constituted, as it was made dependent upon Annexure P-4, annexure whereof, is a special power of attorney, constituting one Mohinder Pal Gupta, as attorney for the purposes of instituting, and, prosecuting the complaint, on behalf of the principal i.e. one Dinesh Kumar Gupta. However, the complaint titled *Vidhu Gupta versus Maghav Gupta and another*, rather became instituted by the afore constituted special power of attorney, whereas, the specially constituted power of attorney, enabled

complaint drawn rather by one Dinesh Kumar Gupta against the accused concerned, than to file, and, prosecute the extant complaint.

2. Be that as it may, since this Court believes the statement made, at the bar, by the learned counsel for the respondent-complainant, that one Vidhu Gupta, the complainant in complaint (supra) has also, through a validly drawn special power of attorney, rather executed for the relevant purposes, in favour of the attorney concerned, and, that by a sheer, and, a bonafide mistake, it has not been filed in the instant case, but has been filed in another complaint, titled as *Maghav Gupta versus Dinesh Kumar Gupta*. Moreover, since he has also stated at the bar, that an application for placing, onto the relevant file i.e on the file of the extant complaint, the apposite thereto power of attorney, executed by one Vidu Gupta in favour of the attorney concerned, rather is pending adjudication, before the learned Magistrate concerned. Therefore, when not only the afore defect, is curable but may also become ultimately cured, through a valid order being drawn by the learned Magistrate concerned, upon the afore application, which is rather subjudice before him, and, wherethrough the relevant to the instant complaint, rather the special power(s) of attorney may become ordered to be placed on the record of the apposite complaint(s). In sequel, the force of above argument becomes completely unhinged, and, is rejected.

3. Another argument, as made before this Court, appertaining to a challenge to the summoning order, and, anchored upon the factum of the petitioner herein arrayed as co-respondent No. 4, in the complaint (supra), never signing the dishonoured negotiable instrument(s) concerned, and, or there being no allegation against him, in the complaint (supra) about his sharing any mens rea in the issuance of the dishonoured negotiable

instrument concerned, to the complainant. However, the mere fact of the present petitioner herein not being a signatory to the dishonoured negotiable instrument concerned, prima facie at this stage, is of no relevance and rather is insignificant, unless evidence becomes adduced, that despite his being a responsible head of the issuing entity concerned, the processings of payments which ultimately resulted in the issuance of the dishonoured negotiable instruments concerned, never occurred, either with his consent, nor ultimately he made any approval to the issuance of the dishonoured negotiable instrument concerned, to the complainant. The above evidence does not exist on record, and, may exist on the records concerned, but at the relevant phase, and, besides rather when there is an attribution to the present accused qua his sharing the relevant mens rea, with the other co-accused, in the issuance of the dishonoured negotiable instrument concerned, thereupon, the afore plea can be canvassed, as a valid defence, before the learned Magistrate concerned, either through meetings of suggestions to the complainants witness, or through adduction of defence evidence.

4. In view of the above observations, this Court does not find any merit in the present petition, and, the same is hereby dismissed.

(SURESHWAR THAKUR)
JUDGE

April 27, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No