

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

CRM-M-30509 of 2022(O&M)

Date of Decision: 25.07.2022

Bhoj Raj Teli

...Petitioner

Versus

State of Punjab & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Gurmohan Singh Bedi, Advocate,
Mr. Pawandeep Singh, Advocate and
Mr. Faraz Maqbool, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing and setting aside of order dated 02.06.2022 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Abohar in complaint NACT No. 1401 of 2017 titled Balkaran Singh Vs. Bhojraj & Ors. to the extent of granting permission to general power of attorney holder Swarn Singh Gill to examine and record his statement as a complainant's witness (CW) on behalf of legal representatives of the original complainant.

The factual position as has been summarized by the counsel for the petitioner is that Balkaran Singh (complainant) filed complaint under Section 138 of Negotiable Instruments Act(for brevity, the Act) against petitioner and some other persons with regard to dishonor of account payee cheque worth Rs.2 crores.

During the pendency of the said criminal complaint, Balkaran Singh (complainant) died and an application was moved by his widow Piarjit Kaur and three children seeking permission to prosecute the complaint being legal representatives of deceased complainant. The said application was allowed by the trial Court and the aforesaid LRs of Balkaran Singh were given permission to further proceed with the complaint as per law. During pre-summoning evidence Piarjit Kaur widow of Balkaran Singh appeared in the witness box as CW1 on 21.07.2018. She also examined other witnesses. On the same day i.e. 21.07.2018 an application was filed to grant permission to the LRs of the complainant to pursue the complaint through Swarn Singh Gill, he being their general power of attorney holder. Thereafter, vide order dated 18.09.2018 the trial Court passed summoning order under Section 138 of the Act against the petitioner and some other accused persons. While passing the said order, the trial Court also allowed general power of attorney Swarn Singh Gill to pursue the complaint on behalf of the complainant. Thereafter, the petitioner and other accused persons put in appearance and notice of accusation was served to them to which they did not plead guilty and then the trial Court fixed the case for post notice evidence of the complainant. In the meantime, Swarn Singh Gill filed an application for grant of permission to examine and record his statement as CW on behalf of LRs of the complainant as per the general power of attorney executed by them in his favour. The said application was opposed by the petitioner and other accused, but the said application was

allowed by the trial Court vide the impugned order (Annexure P-1) with following observations

“...the application filed by Piarjit Kaur, legal heir of complainant which was allowed on 18.9.2018, it was specifically mentioned that the GPA is fully conversant with the facts of the present case meaning thereby Prima-facie it appears that GPA has the knowledge regarding the case. Counsel for the accused/ respondent argued that it was not mentioned that GPA was present at the time of alleged transaction. Now, this fact that whether GPA was present or not present at the time of transaction stated by the complainant can only be decided after examination in chief and cross examination of GPA and at this stage GPA cannot be denied to examine on behalf of legal heirs of complainant. Therefore, in view of above said discussion, the present application stands allowed, subject to all just exceptions.”

The petitioner being aggrieved by the impugned order has filed the present petition.

The Senior counsel appearing for the petitioner submits that Swarn Singh Gill who was having no personal knowledge regarding the facts of the complaint filed by Balkaran Singh under Section 138 of the Act, cannot be examined as a witness of the complainant or his LR's. However, at the same time Senior counsel for the petitioner admits that said general power of attorney holder could be examined as a witness in the complaint case only qua the facts within his personal knowledge. In support of his contentions, learned Senior counsel refers to **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. 2005(2) SCC 217, Shankar Finance and Investments Vs. State of Andhra Pradesh**

2008(8) SCC 536, Man Kaur Vs. Hartar Singh Sangha 2010(10) SCC 512, Seethakathi Trust Madras Vs. Krishnaveni 2022(3) SCC 150, A.C. Narayanan Vs. State of Maharashtra 2014(11) SCC 790 and Mukesh Aggarwal Vs. Rajinder Kumar Pahwa, 2011 SCC OnLine P&H 11046.

I have considered the submissions made by Senior counsel for the petitioner.

The factual position has already been discussed above. Admittedly, the complainant died during pendency of the complaint and his widow and children who are residing in Canada were impleaded as his LRs and the widow of the complainant appeared as CW1 during the pre-summoning evidence. On the request of the LRs of the complainant, permission was given to them to pursue the complaint through their general power of attorney Swarn Singh Gill. On completion of the pre-summoning evidence petitioner and some other persons were summoned as accused and they put in appearance and had not pleaded guilty to the notice of accusation which was served to them. Thereafter, Swarn Singh Gill general power of attorney holder filed an application to examine and record his statement as CW on behalf of LRs of complainant. The same has been allowed vide impugned order (Annexure P-1).

The legal position as to who should give evidence in regard to matters involving personal knowledge, is well settled and has been summarized in Man Kaur's case (supra) which is as follows

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the

transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

xxx”

Undoubtedly, the power of attorney holder cannot step into the witness box or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal regarding which he is having no personal knowledge. However, the power of attorney holder could appear in the witness box to depose qua the facts within his personal knowledge. So, in the instant case Swarn Singh Gill the general power of attorney holder could appear in the witness box and depose qua his personal knowledge only but could not depose as a substitution for LRs of complainant with regard to the facts which are beyond his personal knowledge. To that extent the impugned order requires to be modified.

The present petition stands disposed of with aforesaid modification in the impugned order.

25.07.2022

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**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No