

119

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57261-2022

Date of decision : 21.12.2022

Angrej Singh

...Petitioner

Vs.

M/s Rakesh Kumar Sandeep Kumar
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

DEEPAK MANCHANDA, J. (Oral)

Through this petition, filed under Section 482 Cr.P.C., the petitioner has prayed for quashing of Complaint bearing No.CIS-955/2017 dated 30.08.2017 (Annexure P-1) registered under Section 138 Negotiable Instruments Act, 1881 titled as "M/s Rakesh Kumar Sandeep Kumar and Anr Vs. Angrej Singh", which is pending before JMIC Kaithal and the subsequent proceedings arising therefrom.

Learned counsel for the petitioner contends that the complainant had expired on 05.11.2021 and the respondents filed an application for substitution of their names in place of said complainant on 22.02.2022. The petitioner filed an objection thereto no order was passed on the said application till 15.09.2022. He further contends that the application for substitution of names of the respondents, who are complainant, was illegally allowed vide order dated 15.09.2022 (Annexure P-4). He further contends that the complaint is pending at pre-mature stage since last more than five years and complainant

was not appearing continuously and unfortunately expired on 05.11.2021, even after the death of the main complainant, the complaint was entertained by JMIC. He submits that the petitioner, who has faced long trial of five years, and is 70 years of age and the trial got delayed by the complainant on one or other pretext, which should have been dealt with under Section 256 Cr.P.C on account of dilatory tactics, due to which the petitioner is being made to suffer. He also argues that neither there was any precedent nor there was any reason for allowing the application for Lrs for pursuing the complaint filed by the complainant (who expired on 05.11.2021) and the same should not have been allowed as there was no explanation regarding delay in filing the application.

I have heard learned counsel for the petitioner and have gone through the case file.

Learned counsel for the petitioner has raised two questions before this Court. Firstly, substitution of LR's in place of deceased Rakesh Kumar (complainant), who expired during the pendency of the aforesaid complaint and the trial Court allowed the application and substituted respondents being LR's as complainant in place of his deceased father-Rakesh Kumar vide order dated 15.09.2022 and same was upheld vide judgment dated 04.11.2022, where the petitioner had filed criminal revision under Section 397 of Cr.P.C, but both the orders are not under challenge before this Court.

The second question has been raised by learned counsel for the petitioner is that the trial was got delayed by the complainant on one or the other pretext and the same should have been dealt with under Section 256 of Cr.P.C where the complainant was not appearing in pursuance of his own complaint filed under Section 138 Negotiable Instruments Act, 1881. The trial

Court vide order dated 15.09.2022 allowed the application filed by the respondent No.2 being LR of the complainant/respondent No.1 and substituted him as complainant, who had died on 05.11.2021 on the basis of Will dated 10.01.2021 where legality and sanctity of the same was never challenged by the petitioner. Thereafter, even the judgment dated 04.11.2022 passed by the Revisional Court while dealing with the same issue, the said order was upheld and the revisional Court also dealt with the plea taken by the petitioner with regard to Section 256 Cr.P.C with reference to the complaint under Section 138 of the Act and observed that there is nothing to bar the prosecution to be conducted by proper person in place of deceased/complainant and the death of the complainant *ipso facto* would not lead to termination of legal proceedings and the Magistrate has power to allow the substitution if he satisfied on the very materials on record and other surrounding circumstances that such permission should be given. It is further observed that Section 256 Cr.P.C empowers the trial Court to acquit the accused or to adjourn the case to a future date or to dispense with the attendance of the complainant and proceed with the case in his absence, therefore, death of the complainant does not bring an automatic termination of the criminal proceedings. Hence, the trial Court has rightly allowed the substitution on the death of the original complainant-Rakesh Kumar after weighing the materials available on record and from the circumstances to do so. Moreover, the person, who applied to be substituted is none other than the son of the original complainant and is a fit person, to further prosecute with the complaint, which cannot cause any injustice to the petitioner. Both the issues have been dealt with by the Hon'ble Supreme Court in its judgment rendered in "*Sk.Tamisuddin Vs. Joy Joseph Creado and*

another", 2018 (3) *Law Herald (SC)* 2585 and held as under:-

"4. We have considered the decision of this Court in *A.C. Narayanan vs. State of Maharashtra and Another* (2015) 12 SCC 203, wherein this Court has clearly held that a complaint filed by the power of attorney would be maintainable in law. If that is so, the initial complaint filed by the appellant on behalf of Sairabee as the complainant would not be invalid in law as held by the High Court in the order under challenge. After the death of Sairabee, the application filed by the appellant was to continue the criminal prosecution as the legal heir of the deceased Sairabee, the High Court seems to have understood this application to be for continuance of the criminal prosecution in his capacity as a Power of Attorney. The competence of the legal heir of a person aggrieved to continue a criminal complaint is not in doubt. The High Court therefore, in our considered view, ought to have allowed the continuance of the proceedings as prayed by the appellant and ought not to have quashed the proceedings as it has been done."

Further, in "**Sumit Kandhari Vs. M/s Surya Industries and another**"

2019 (1) R.C.R.(Civil) 741, the Coordinate Bench of this Court has also dealt with

this issue and held as under:-

"10. Learned counsel for the respondent has relied upon 2007 (2) R.C.R. (Criminal), 155 titled as Rashida Kamaluddin Syed and another vs. Shaikh Saheblal Mardan (dead) through Lrs. and another, wherein the Hon'ble Supreme Court has held as under :-

"Reference was also made to Balasaheb K. Thackeray & Anr. v. Venkat @ Babru & Another, (2006) 5 SCC 530 : JT 2006 (7) SC 44, to which one of us (C.K. Thakker, J.) was a party. In that case, V filed a complaint against the accused in the Court of Judicial Magistrate, First Class for commission of offence punishable under Section 500 read with 34 IPC. The complainant, however, died in 2005 during the pendency of the proceedings in this Court. The accused, therefore, made an application under Section 256 of the Code for dismissal of the complaint on the ground of death of complainant. Legal heirs of the complainant submitted that they would make an application before the Trial Court where the case was pending as the accused had approached this Court against an interim order and the proceedings were pending in the Trial Court.

This Court considered the provisions of Section 495 of the old Code and Section 302 of the present Code as also Ashwin Nanubhai and Jimmy Jahangir and observed that since the proceedings were pending before the Trial Court, it was not necessary to express any opinion one way or the other. It was observed that if any permission would be sought to continue prosecution by the legal heirs of the deceased, the Court would consider the same in its proper perspective and take an appropriate decision in accordance with law.

From the above case law, in our opinion, it is clear that on the death of Shaikh Saheblal, the case did not abate. It was, therefore, open to the sons of complainant to apply for continuation of proceedings and other connected case -6- against accused persons. By granting such prayer, no illegality has been committed by the courts."

11. Counsel for the respondent has further relied upon 1967 AIR (SC) 983 titled as Ashwin Nanubhai Vyas vs. State of Maharashtra and another which is relied upon in Rashida Kamaluddin Syed'case (Supra). He further replied upon 1992 (3) Crimes, 666, titled as T.N. Jayaranjan vs. Jayarajan, wherein the High Court of Kerala has held that during the pendency of a complaint under Section 138 of the N.I. Act, if the complainant died, the son of the complainant may be granted permission to proceed with the complaint.

12. After hearing learned counsel for the parties, I find no merit in the present petitions for the following reasons:-

(a) In view of the judgment Rashida Kamaluddin Syed'case (Supra) it is well settled that if the complainant died during the pendency of the complaint under Section 138 of the N.I. Act, his legal representative can be substituted as a complainant and, therefore, I find no illegality in the impugned order dated 21.08.2015.

(b) So far as the arguments raised by learned counsel for the petitioner qua the observation of the Court regarding recording of statement of Aditya Behl (CW3) dated 18.11.2015 is concerned, neither the petitioner filed any revision before the Revisional Court challenging the said observation nor the same is illegal in any manner as being a complainant, he has a right to appear as his own witness.

(c) It is not disputed that after cross-examination of deceased-Ajay Behl was deferred, he died and, therefore, the substituted complainant has a right to appear as a complainant in his place as the cross- examination of Ajay Behl was not completed."

The third issue for the consideration before this Court is whether the complaint pending before the trial Court is at pre-trial stage. The Hon'ble Supreme Court in its judgment rendered in "**Rathish Babu Unnikrishnan Vs. The State (Govt. Of NCT of Delhi) & Anr.**", 2022 (2) RCR (Criminal) 571 has held as under:-

"16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality,

so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

In view of the above conspectus of the judgments and the settled proposition of law that if the complainant died during the pendency of the complaint filed under Section 138 Negotiable Instruments Act, 1881 the legal representative can be substituted as complainant. The arguments of learned counsel for the petitioner with regard to termination of criminal proceedings under Section 256 Cr.P.C is not tenable because as per Section 256 Cr.P.C, the Court can proceed with the matter even after dispensing with the attendance of the complainant, so the said plea cannot help the petitioner for his narrow escape from the criminal proceedings, which he has been facing.

In view of the above, no ground is made out for invoking the inherent powers under Section 482 Cr.P.C.

Consequently, present petition is dismissed.

(DEEPAK MANCHANDA)
JUDGE

21.12.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No