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

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CRM-M-14188-2019

Date of decision : 08.08.2023

Vijay Kumar

..... Petitioner

versus

Sham Lal

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Varun Jain, Advocate and
Mr. Kanish Jindal, Advocate
for the petitioner.

Mr. Nitish Garg, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Prayer is for quashing of complaint No. 194/2016 dated 08.08.2016 under Section 138 of the Negotiable Instruments Act (Annexure P-1), summoning order dated 17.11.2017 (Annexure P-5) and order dated 03.01.2019 (Annexure P-9) passed by SDJM, Sunam vide which the application preferred by the petitioner for his discharge stands dismissed.

2. Petitioner has been summoned to face trial in a complaint filed under Section 138 of the Act. Cheque amounting to Rs.1,42,000/- dated 22.06.2016 issued by the petitioner in favour of a proprietorship firm working under the name of 'Sham Lal Suresh Kumar' is stated to have dishonoured.

3. The precise and solitary argument raised by counsel for the petitioner is that the complaint was filed by Sham Lal of M/s. Sham Lal

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Suresh Kumar and not by the firm. He further submits that even Sham Lal unfortunately died during the pendency of the complaint and his son has come on record as LR of the complainant - Sham Lal and not qua firm.

4. *Per contra*, counsel for the respondent submits that to begin with the complainant was proprietor of the holder in due course firm and thus, there cannot be any defect alleged in institution of the complaint. After the death of Sham Lal, respondent stands impleaded as LR of deceased Sham Lal. The firm has now attained the character of partnership firm where respondent and his wife have joined as registered partners.

5. I have heard counsel for the parties and have gone through the records of the case.

6. Trite it is that proprietorship firm has no separate legal entity vis-a-vis proprietor and thus counsel for the complainant is right in contending that so far as the institution of the complaint is concerned, no fault can be found qua the same.

7. Admittedly, the complainant-Sham Lal has now since deceased and his LR has come on record. So far as the continuity of firm and the change in character thereof and the rights of the registered partners to pursue the complaint is concerned, that is the matter of trial. Definitely, LR of the complainant will have a right to lead evidence to show as to how he has stepped into the shoes of complainant-Sham Lal.

8. Reliance can be laid down to the observations made in

S.K. Tamisuddin vs. Joy Joseph Creado and another 2018(3) Law

Herald (SC) 2585, wherein the Apex Court held as under:-

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A complaint was filed by one-Sairabee through her Special Power of Attorney Holder, Sk. Tamisuddin, the appellant herein, under section 138 of the Negotiable Instruments Act, 1881 read with section 420 IPC. Sairabee died while the trial was in progress. The appellant after the death of Sairabee filed an application before the learned trial Court to continue the prosecution as her legal heir (son). The said application was allowed by the learned trial Court.

2. In a quashing petition, the High Court by the impugned order took the view that the initiation of the complaint by the Special Power of Attorney of Sairabee was invalid and that the continuance of the proceedings after the death of Sairabee by the said Power of Attorney would not be permissible. Hence the proceedings against the accused-respondents were quashed by the High Court.

3. We have heard the learned counsels for the parties.

4. We have considered the decision of this Court in ***A.C. Narayanan v. 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

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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.

5. We, therefore, set aside the order of the High Court and direct for commencement of the trial against accused-respondent No. 1 from the stage at which the trial was interdicted by the High Court by the Order under challenge.

6. The appeal is consequently allowed in the above terms.” (emphasis supplied)

9. In view of above, this Court finds no merit in the present petition and the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

08.08.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No