

125 (2 cases)

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

Date of decision: 27.07.2023

1. CRM-M-26253-2023 (O&M)
2. CRM-M-26254-2023 (O&M)

VICTORY OIL GRAM UDYOG ASSOCIATION AND OTHERS

....Petitioners

Versus

M/S HINDUSTAN OIL TRADERS

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunit Kumar, Advocate,
Mr. Daljeet Singh, Advocate and
Mr. Sachin Luthra, Advocate for the petitioner.

PANKAJ JAIN. J.(Oral)

This order shall dispose of two petitions i.e CRM-M-26253-2023 and CRM-M-26254-2023 filed under Section 482 Cr.P.C. seeking quashing of the complaints bearing No.715/2022 & 570/2022 dated 25.02.2022 along with a summoning Order dated 30.04.2022 (Annexure P-2).

2. Learned counsel for the petitioner has raised two-fold submissions. First submission raised by counsel for the petitioner is with respect to the complaint having been invalidly initiated by attorney, who is not a witness to the transaction.

3. The second submission is based upon the power of attorney alleged to have been executed by the partners of the firm who have been

arraigned as petitioners No.3 to 7 in the present petition in favour of petitioner No.2. He further submits that petitioners No.3 to 7 are neither active partners nor the signatory to the cheque ought not have been summoned as accused.

4. In order to buttress his arguments, counsel for the petitioner has placed reliance upon law laid down by Apex Court in the case of **“A.C. Narayanan Versus State of Maharashtra and another”** reported as **(2014) 11 Supreme Court Cases 790**.

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

6. In the considered opinion of this Court, while exercising jurisdiction under Section 482 Cr.P.C. at this stage, this Court cannot look at the power of attorney, placed on record by the petitioner alleged to have been executed by petitioner Nos.3 to 7 in favour of petitioner No.2 and quash the complaint. This Court is guided by law laid down in the case of **'SP Mani & Mohan Dairy Vs. Dr. Snehalatha Elangovan', 2022(4) R.C.R. (Criminal) 743** wherein law laid down by Apex Court in the case of **Rallis India Ltd. vs. Poduru Vidya Bhusan & Ors., (2011) 13 SCC 88** has been reiterated observing as under:

“We reiterate the observations made by this Court almost a decade back in the case of **Rallis India Ltd. vs. Poduru Vidya Bhusan & Ors., (2011) 13 SCC 88**, as to how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the

companies. “The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in section 141 of the NI Act (which is pari materia with identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954; etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties.”

7. Coming on to the first plea raised by counsel for the petitioner attacking the complaint to be not instituted validly as the attorney nowhere asserts that he witnessed the transaction, this Court finds that the argument raised is misconceived and the reliance placed upon law laid down in A.C. Narayanan's case (supra) is misplaced.

8. It will be apposite to peruse the dictum of law laid down in **A.C. Narayanan's case (supra)** which reads as under :

“33. While holding that there is no serious conflict between the decisions in M.M.T.C. and Janki Vashdeo Bhojwani, we clarify the position and answer the questions in the following manner:

“33.1 Filing of compliant petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.

33.2 The power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

33.3 It is required by the complainant to make specific assertion as to the knowledge of the power-of-attorney holder in the said transaction explicitly in the complaint and

the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

33.4 In the light of Section 145 of NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of NI Act.

33.5 The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.”

9. Facts of the present case when gazed from the prism of aforesaid proposition of law, it is evident that the complaint preferred through Power of Attorney is perfectly legal and competent. In the affidavit accompanying the complaint the authorized representative of the complainant has explicitly claimed that the contents of the affidavit sworn by him and tendered in support of the complaint are true and correct to his knowledge. The said affidavit tendered by the authorized representative of the complainant is part of evidence as per Section 145 of the NI Act, 1881 and as per law laid down in A.C. Narayanan's case (supra) the Magistrate can well rely upon the verification in the form of affidavit filed in support of the complaint to issue process on the complaint. An agent/ authorized

representative of the holder in due course necessarily is not required to be witness to the transaction. He may possess due knowledge regarding the said transaction. Thus, even as per authoritative proposition of law laid down in A.C. Narayanan's case, this Court does not find that the instant complaint as well as the impugned summoning order can be stated to be not sustainable in the eyes of law.

- 10. Resultantly, this Court does not find it to be a fit case to exercise jurisdiction under Section 482 Cr.P.C. to throw the complaint out at this initial stage.
- 11. In view of above, the present petitions are dismissed.
- 12. A copy of this order be kept on the file of other connected case.

July 27, 2023
Dpr/Amandeep (PANKAJ JAIN)
JUDGE

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