

AT CHANDIGARH

CRM-M-21965 of 2023

Date of Decision: May 02, 2023

Kuldeep Singh

...Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Ms. Santosh Bhardwaj, Advocate for the petitioner.

DEEPAK GUPTA, J. (Oral)

Petitioner is accused in criminal complaint bearing No. NACT - 04 of 2019 titled “Smt. Rekha Vs. Kuldeep Singh”, pending in the Court of learned SDJM, Samalkha, District Panipat so as to prosecute him (petitioner) under Section 138 of the Negotiable Instruments Act.

2. During pendency of the complaint, complainant Smt. Rekha expired. Brother of husband of said Smt. Rekha moved an application to implead him as legal representative of complainant Rekha so as to pursue the complaint. That application was allowed by the trial Court vide order dated 12.12.2022 (Annexure P2), which has been upheld by learned Additional Sessions Judge, Panipat vide order dated 17.02.2023 (Annexure P1) in the revision filed by the petitioner.

3. It is against the afore-said orders that petitioner has approached this Court. It is submitted that mother of the original complainant is the Class I legal heir, who is still alive. Besides, her brother is also alive but these facts were concealed from the Court and in order to grab the money, application was moved by brother of the husband of the deceased- complainant who has been allowed to be brought on record as legal representative of the deceased- complainant.

Prayer is made to set aside the impugned orders.

4. After hearing learned counsel for the petitioner and perusing the paper book, I find no merit in the revision.

5. Perusal of the impugned order reveals that when during pendency of the complaint, the original complainant Smt. Rekha expired, her daughter Sarita Rathi was impleaded as her legal representative to pursue the complaint but she too expired on 15.11.2021. It is further noticed by the Revisional Court that husband of Rekha had already expired on 14.11.2021 and it is in these circumstances that Sukhbir Singh, the brother of husband of Rekha, was permitted to be brought on record as legal representative of the deceased- Rekha so as to pursue the complaint.

6. Section 256 of the Code of Criminal Procedure reads as under: -

“256. Non- appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub- section (1) shall, so far as may be, apply also to cases where the non- appearance of the

complainant is due to his death.”

7. It is clear from the proviso to Section 256 (1) that in case of trial of summons case, it is not necessary or mandatory that after death of the complainant, the complaint is to be rejected. Rather in exercise of the power under proviso to Section 256(1) Cr.P.C. the Magistrate can proceed with the complaint. This view is supported by judgment of Hon’ble the Supreme Court in ***Chand Devi Daga and others Vs. Manju K. Humatani and others, MANU/1380/2017.***

8. In another case titled ***Shankar Lal Vs. Sanyogita Devi (dead) through Lrs - Criminal Appeal No.485 of 2002*** decided by Hon’ble Supreme Court on 28.10.2009, it has been held that a heir of the deceased holder in due course of the cheque can bring action on the basis of the cheque to recover the amount due thereon to the deceased holder by reason of the fact that he succeeds to the estate of the deceased holder by inheritance i.e. operational of law and if that be so, there is no reason as to why the legal heirs cannot file complaint under Section 138 of the Negotiable Instrument Act. It was further held as under:

"There is no reason on principle to hold that a complaint filed by a legal heir of the original holder in due course of the cheque cannot be taken cognizance by the court. In our considered view, neither the cause of action nor the right conferred upon the holder in due course of the cheque to proceed and file complaint under Section 142 of the Act for the offence under Section 138 of the said Act comes to an end after the death of the holder in due course of the cheque.”

9. It is clear from the afore-said opinion expressed by Hon’ble Supreme Court that a legal heir of the cheque holder can file a complaint under Section 138 of the Negotiable Instruments Act. Once it is so, there is no reason that why in the pending complaint, if complainant dies,

his/her legal heir cannot continue the complaint.

10. Contention of learned counsel for the petitioner that mother of the deceased- complainant Rekha is alive, who is Class I legal heir, has no merit. Section 15 of the Hindu Succession Act provides general rules of succession in case of female Hindus. The said Section reads as under:

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“15. General rules of succession in the case of female Hindus.

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(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, —

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) xxxxxxxxxxxx.”

11. Thus, on death of a female Hindu dying intestate, her property shall devolve firstly upon her children or the husband; and secondly, upon the heirs of husband. It is only in the absence of the children and the husband of the deceased female Hindu that her property shall devolve upon the heirs of the husband and in the absence of any of the heirs under these two categories, her property will be inherited by mother and father of the deceased female Hindu.

12. In the present case, it is not disputed that brother of the husband of the complainant falls in the second category of the heirs of the deceased- respondent, as he is the class II legal heir of the husband of the

deceased complainant in view of Schedule attached to Hindu Succession Act to be read with Section 8 of the said Act. In the absence of class I legal heir of deceased husband of deceased complainant, brother of husband of deceased complainant, is to be preferred comparing to the mother of deceased complainant. Mother of the complainant even if alive falls in the third category, as per Section 16. Even otherwise, there is nothing on record to suggest that said mother of the deceased; or her brother, ever came forward before the trial Court to be impleaded as a party.

13. In view of the above, it is held that no error has been committed by the trial Court in permitting the brother of the husband of the deceased – complainant to be brought on record in place of deceased-complainant so as to pursue the complaint.

Petition is accordingly dismissed.

May 02, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No