

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

CRM-M-56216-2022

Date of Decision: November 20, 2023

PARAMJIT KUMAR JHAMAT

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.P. Soi, Advocate and
Mr. Sahil Soi, Advocate for the petitioner.
Mr. IPS Sabharwal, DAG, Punjab.
Mr. L.S. Mann, Advocate for respondents No.2-10.

HARPREET SINGH BRAR, J. (ORAL)

The petitioner has approached this Court by way of filing the present petition under Section 482 CrPC seeking quashing of order dated 05.11.2022 passed by learned SDJM, Nakodar vide which application of respondent Nos.2-10 under Section 302 of CrPC filed through their alleged attorney Mohan Lal s/o late Dhanna Ram in case No.CHI/230/2013 (arising out of FIR No.220 dated 19.08.2012 registered under Sections u/s 419, 420, 465, 467, 468, 471 and 120-B IPC, P.S. Sadar, Nakodar, District Jalandhar Rural) has been allowed.

2. Learned counsel for the petitioner inter alia contends that the petitioner is the grandson (i.e. a daughter's son) of the late Sh. Nazar Ram. Late Sh. Nazar Ram used to reside in the U.K. and during his visit to India he used to stay with the family of the petitioner. Respondent Nos. 2 to 10 are also permanent residents of the U.K. and are the other legal heirs of late Sh. Nazar Ram. In June 2012, one Shadi Ram s/o Late Sh. Dhanna Ram, who is the brother-in-law of

Respondent No. 4-Bakshi Ram, claiming to be attorney of respondents No.2-10 made a complaint to the Police alleging that the petitioner & others have forged the will of late Sh. Nazar Ram. Even before making the complaint, Shadi Ram obtained a self-serving report from a handwriting expert. Furthermore, a pre-FIR inquiry was conducted by the police wherein none of respondent nos. 2 to 10 nor their alleged attorney Mohan Lal appeared. The police scribbled the statements of Shadi Ram and some others and registered FIR No. 220 dated 19-08-2012 at PS Sadar Nakodar, Distt. Jalandhar against the petitioner and also against two advocates from Ludhiana. The police conducted investigation and filed a challan in the court on 09-10-2013. None of the private respondents nor their present attorney Mohan Lal appeared anywhere in the pre-FIR Inquiry or in the Investigation nor do their names figure anywhere in the list of witnesses.

3. Learned counsel for the petitioner further contends that controversy involved in the present case stands settled by the observation of the Hon'ble Supreme Court in **Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (Dead by LR's) 2004(4) RCR (Criminal) 1001(SC).**

4. Having heard learned counsel for the parties and after perusing the record, it transpires that Shadi Ram unfortunately passed on 19.11.2017 during the pendency of trial. On 31.07.2019 one Mohal Lal claiming himself to be brother of Shadi Ram-complainant moved an application under Section 302 CrPC. The application filed by Mohal Lal was dismissed following which he approached this Court by way of filing

of CRM-M-15624-2021 which was dismissed as withdrawn on 09.04.2021, however, liberty was granted to file appropriate application under Section 302 CrPC on behalf of main complainants before the trial Court.

5. In spite of the fact that the right of Mohan Lal to pursue the case under Section 302 CrPC was curtailed and this Court has granted liberty only to the legal heirs to pursue the case, respondents No.2-10 have not filed any application under Section 302 CrPC in their own capacity rather an application dated 16.03.2022 (Annexure P-10) was filed through the same power of attorney holder Mohan Lal which is not permissible as per the law laid down by Hon'ble Supreme Court of India in case of **Jimmy Jahangir Madan (supra)**. Para 9 of the judgment is reproduced hereunder:-

“The language of Sections 205 and 302 of the Code is similar. Under Section 302 of the Code, a party can make an application himself to continue the prosecution or the same can be made by a pleader. As provided under Section 2(q) of the Code, the prayer to continue the prosecution can be made either by a legally qualified person, who is authorised to practise in the court under the Advocates Act; or by any other person which would obviously include a power of attorney holder in which eventuality such permission can be granted by the court where the prosecution is pending only if it is sought by the person who is entitled to continue the prosecution and not by the power of attorney holder. Under Section 205 of the Code, an accused is required to appear in person but his personal appearance can be dispensed with and he can be allowed to be represented by a pleader. Likewise, under Section 302 of the Code, a person, who is entitled to

continue the prosecution, is required to make an application himself but under both the provisions aforesaid, instead of taking steps personally, a party can be represented through a pleader. Power of attorney holder can represent the concerned party under both the provisions of the Code, in case permission for such representation is sought from the court by the concerned person and granted by it. But where no such permission is sought by the concerned person, meaning thereby, in the case of Section 205 of the Code an accused and in the case of Section 302 of the Code a party who has right to continue the prosecution, power of attorney holder cannot be allowed to represent the concerned person in the proceeding.”

6. Learned counsel for the respondents No.2-10 has not been able to controvert the factual position and the ratio of law as laid down by the Apex Court in **Jimmy Jahangir Madan (supra)**.
7. Keeping in view the facts and circumstances of the case and the judgment of the Hon'ble Supreme Court in case of **Jimmy Jahangir Madan (supra)**, the present petition is allowed and the impugned order dated 05.11.2022 (Annexure P-11) passed by the learned Sub-Divisional Judicial Magistrate, Nakodar in case No.CHA/230/2013 arising out of FIR No.220 dated 19.08.2012 registered at Police Station Sadar, Nakodar, District Jalandhar Rural is quashed.
8. Pending application(s), if any, shall also stand disposed of.

20.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

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