

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11984-2021 (O&M)

Date of Decision: 29.07.2024

Sukhraj Kaur Swani

... Petitioner

VS.

Sukriti Gupta

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rakesh Bhatia, Advocate for the petitioner

Mr. Mohit Garg, Advocate for the respondent

Sandeep Moudgil, J.

(1). This petition under Sections 482 CrPC has been filed by the petitioner seeking quashing of the complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) bearing No.7644 dated 02.07.2019 (Annexure P2) as well as the summoning order dated 12.09.2019 (Annexure P3) pending before JMIC, Ludhiana.

(2). Learned counsel for the petitioner submits that the petitioner is a lady of 75 years, who was Ex-Director but was not the signatory to the cheque in question. He also points out that in the complaint dated 02.07.2019, alleged attorney-Ashwani Kumar of Sukriti Gupta (complainant), has not specifically stated that he was a witness to the transaction. He further points out that as per the law laid down by the Supreme Court in **A.C. Narayanan Vs. State of Maharashtra & another, AIR 2015 Supreme Court 1198**, it is mandatory for the complainant to be the witness of the transaction. He makes a specific reference to Para 15 of the said judgment, which reads as under:-

"15. (iii) 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."

(3). Reply has been filed by the respondent wherein she averred that the power of attorney is authorized to do all the acts including deposition and that the appointed attorney is acquainted with the facts of the case and having knowledge of the transactions entered into between the petitioner-company and the respondent. She further submits that as to whether or not the petitioner is actively participating in the affairs of the company is a factual aspect which can only be determined by leading evidence before the trial court.

(4). Heard learned counsel for the parties.

(5). The Supreme Court in **Mita India P.Ltd. vs. Mahendra Jain, 2023 SCC Online SC 163** took recourse to the decision of **A.C.Narayanan's** case (supra) to categorically hold that the filing of a complaint under Section 138 of the NI Act through the power of attorney holder is perfectly legal provided he has due knowledge about the transaction. The relevant portion of the said judgment reads as under:-

"i) Filing of a complaint under [Section 138](#) Negotiable Instruments Act, 1881 through power of attorney holder is perfectly legal provided he has due knowledge about the transaction (s) in question;

ii) Power of attorney holder can depose and verify on oath to prove the contents of the complaint if he has witnessed the transaction;

iii) The complaint filed through power of attorney holder must contain an assertion/ that he had the knowledge about transactions in question..."

(6). In the present case, as per the complaint filed by the respondent, it has been specifically mentioned that Ashwani Kumar has been appointed as Special attorney vide SPA dated 02.07.2019 to file/sign the complaint,

vakalatnama and to do all the proceedings on behalf of the complainant/respondent and since he is acquainted with the facts of the complaint, he is authorized to depose about the same.

(7). It has also been averred in the complaint that the petitioner is the incharge of the affairs of the company and as such responsible for the conduct and day-to-day functioning of the company and since the petitioner was known to the respondent, a sum of Rs.25,00,000/- was advanced as loan. The said incorporation is in sync with the judgment of Supreme Court in **NK Wahi vs. Shekhar Singh & Ors. (2007) 9 SCC 481** wherein it has been held that only such person would be held liable if at the time of offence, such person was incharge and responsible for the conduct of business of the company.

(8). At the stage, the contention of the petitioner that he was only the director and not the signatory of the cheque is also liable to be rejected does not hold good as the petitioner cannot shy away from its responsibility of being director of the company inasmuch as the respondent has impleaded the company in the complaint and director of the company, he is liable to face the consequence under the NI Act.

(9). In view of the above discussion, there is no merit in the present petition which is accordingly dismissed.

29.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No