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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14265-2024
Date of decision : 08.05.2024

GURWINDER SINGHPetitioner

Versus

NAVJOT SINGH SIDHU THROUGH HIS SPECIAL POWER OF
ATTORNEY MANDEEP SINGH SIDHURespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Krishan Sharma Bhardwaj, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C.
seeking quashing/ setting aside the summoning order dated 28th of April,
2023 (Annexure P-3) passed by the JMIC, Jagraon.

2. The complainant/respondent filed complaint against the
petitioner through his Special Power of Attorney i.e. his real brother namely
Mandeep Singh Sidhu. Therein the petitioner has been summoned to face
trial under Section 138 of the Negotiable Instruments Act, 1881.

3. Counsel for the petitioner while assailing the impugned order
has raised the issue w.r.t. maintainability of the complaint through Special
Power of Attorney of the complainant on the ground that from the complaint
itself, it is nowhere evident that the Power of Attorney was in the knowledge



and was part of the transaction *qua* which the cheque is alleged to have been issued.

4. I have heard counsel for the petitioner and have carefully gone through records of the case.

5. The solitary contention raised by counsel for the petitioner sans merit and deserves to be rejected.

6. In order to appreciate the plea raised by counsel for the petitioner, it will be apposite to peruse the dictum of law laid down in **A.C. Narayanan vs. State of Maharashtra, 2013(4) RCR (Criminal) 306** 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.



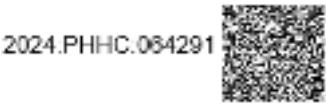
33.4 In the light of Section 145 of NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present 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.”

7. 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. The averments made in Para 1 of the complaint reads as under :

“1. That the complainant has filed the present complaint through his special power of attorney and real brother Mandeep Singh Sidhu as the complainant has to go abroad and the attorney Mandeep Singh Sidhu is the real brother of the complainant and is well conversant with the facts of the present complaint and as such Mandeep Singh Sidhu is competent to file and pursue the said complaint on behalf of the petitioner Navjot Singh Sidhu. Copy of the attorney is attached herewith.”

8. Special Power of Attorney Mandeep Singh Sidhu while leading preliminary evidence tendered affidavit reiterating the aforesaid facts in para



1 of the affidavit which has been placed on record as Annexure P-2, reads as under :

“1. That the complainant has filed the present complaint through his special power of attorney and real brother Mandeep Singh Sidhu i.e. deponent as the complainant has to go abroad and the attorney is the real brother of the complainant and is well conversant with the facts of the present complaint and as such deponent is competent to file and pursue the said complaint on behalf of the Navjot Singh Sidhu.”

9. In view thereof, this Court finds that the averments *prima facie* do satisfy the test laid down by the Supreme Court in the case of **A.C. Narayanan’s case** (supra) and thus the complaint cannot be dismissed at this stage.

10. So far as the plea raised by the petitioner w.r.t. non-pleading of the factual position in the complaint is concerned, trite it is that the evidence need not be pleaded. Whether the Attorney holder will be able to prove the ingredients as contained in Para 1 of the complaint, the same is matter of trial which cannot be foray into by this Court while exercising Section 482 Cr.P.C.

11. In view of above, the present petition is dismissed.

May 08, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No