202 IN THE HIGH COURT OF PUNJAB ANND HARYANA
CHANDIGARH

CRM-M-45028-2016
Date of Decision: 18.03.2024

SUMESH CHADHA

......Petitioner

versus

POONAM VERMA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

Mr. Namit Gautam, Advocate
for the respondent.

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HARPREET SINGH BRAR J. (Oral)

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. 6288 dated 13.07.2016 (Annexure P-2) titled ‘Poonam Verma vs. M/s Chadha Motors & others’ filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and the impugned order dated 14.07.2016 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the petitioner has been summoned to face trial in the aforesaid complaint.

FACTUAL MATRIX

2. The facts, in brief, are that allegedly, the petitioner-accused Sumesh Chadha, who is the partner and the authorized signatory of the accused firm ‘M/s Chadha Motors’ along with other co-accused partners approached the respondent-complainant for a loan of Rs.45,00,000/-. The respondent on being assured by all the accused qua repayment, advanced the said loan amount in favour of the accused firm. When the respondent made a demand for repayment

of the said loan, the petitioner in order discharge the legal liability of the accused firm, issued 3 cheques bearing No. 206870 dated 18.05.2026 for Rs.15,00,000/-, No.203832 dated 11.06.2016 for Rs.10,00,000/-, No.205246 dated 18.06.2016 for Rs.20,00,000/-, respectively, all drawn on ICICI Bank Ltd. in favour of the respondent. Upon presentation for encashment, the aforesaid cheques were dishonoured vide memo dated 22.06.2016 bearing remarks 'Signature Differs'. Thereupon, the respondent served a legal notice dated 25.06.2016 upon the accused calling upon them to make the payment of the aforesaid cheque amount but to no avail. Aggrieved by the same, the respondent-complainant Poonam Verma through her Special Power of Attorney-Mukesh Kumar filed the impugned complaint (supra) against the petitioner and other partners of the accused firm.

3. Learned trial Court, after considering the preliminary evidence, summoned only the present petitioner to face trial for the commission of an offence punishable under Section 138 of the NI Act on the basis of him being the drawer/signatory of the cheque in question vide the impugned order dated 14.07.2016 (Annexure P-3) but did not issue process against the remaining accused. Aggrieved by the abovesaid summoning order, the petitioner has preferred the present petition before this Court.

CONTENTIONS

4. The learned counsel for the petitioner contends that proceedings against him under Section 138 of the NI Act are nothing but abuse of process of law as the same is barred under Sections 3 & 4 of the Punjab Money Lenders Act, 1938 and the respondent being an unregistered money lender as per the provisions of the said Act. He further submits that the complaint (supra) is not maintainable as the cheques in dispute were dishonoured on the ground 'Signature Differs' and the same does not come within the ambit of Section 138

of NI Act. In order to support his aforesaid contention, he places reliance upon the judgement rendered in the case of **Vinod Tanna and Another vs. Zaher Siddiqui and Others, (2002) 7 SCC 541** and **Mustafa Surka vs. Jay Ambe Enterprise and another, 2010(18) R.C.R.(Criminal) 254.** He further submits that even the complaint (supra) is silent qua the date of advancement of the alleged loan or the date of demanding back the same as well as the details of the interest regarding the said loan leading to adverse inference against the alleged claim of the petitioner. It is further contended that the complaint (supra) has been filed by the respondent through her Special Power of Attorney-Mukesh Kumar who does not have any knowledge about the relevant transactions making it a sufficient ground for the dismissal of the said complaint.

5. *Per contra* the learned counsel for the respondent-complainant contends that even though the cheques in question were dishonoured on the ground 'Signature Differs' but the same has been held to fall within the scope of Section 138 of the NI Act in the judgement rendered by Hon'ble Supreme Court in the case of **M/s Laxmi Dyechem vs. State of Gujarat and Others, 2013(1) R.C.R.(Criminal) 260.** He further submits that provisions of Section 3 & 4 of the Punjab Money Lenders Act, 1938 are not applicable to the case at hand since the respondent did not file a suit for recovery but complaint has been filed under NI Act which is a special enactment. He further submits that pleas made by the learned counsel for the petitioner are a matter of trial and should not be considered by this Court to scuttle the proceedings before the learned trial Court. It is further contended that SPA Mukesh Kumar being the husband of the respondent is well aware of the details of the relevant transactions and in order to support his argument, reliance is placed upon the judgements rendered by the Hon'ble Supreme Court in **Vinita S. Rao vs. M/s Essen Corporate Services Pvt. Ltd. and Another, 2014(4) R.C.R.(Criminal) 253** and **A.C. Narayanan**

vs. State of Maharashtra and Another, 2013(4) R.C.R.(Criminal) 306.

ANALYSIS & OBSERVATION

6. It is a settled law that a complaint under Section 138 of the NI Act can be filed through a power of attorney holder of the complainant as held in **Vinita S. Rao (supra)** and **A.C. Narayanan (supra)**. In **A.C. Narayanan (supra),** a three-Judge Bench of the Hon'ble Supreme Court speaking through P. Sathasivam, CJI held the following: -

> *"21. The power of attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be fi led by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot fi le a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.*
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> *22. From a conjoint reading of Sections 138, 142 and 145of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support*

of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit fi led by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

23. <u>In the light of the discussion, we are of the view that the power of attorney holder may be allowed to fi le, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint.</u> On this count, the fourth question becomes infructuous.

24. In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a *proprietary concern, the complaint can be fi led (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.*

x..............x.....................x..............................x

26. While holding that there is no serious conflict between the decisions in MMTC(supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner :

(i) Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.

(ii) 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.

(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.

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

(v) 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. In **Vinita S. Rao (supra),** a two-Judge Bench of the Hon'ble Supreme Court speaking through Justice Ranjana Prakash Desai made the following reservations: -

> *"19. Thus, it is clear that the complaint under Section 138 of the NI Act can be fi led through the power of attorney holder. In this case, Sudhir Gulvady is the power of attorney holder of the appellant and he has filed the complaint on her behalf. The learned Magistrate recorded the statement of the power of attorney holder under Section 200 of the Code on 5/3/2004 and issued summons. We have perused the said statement. It is signed by the power of attorney holder and by learned Magistrate. A.C. Narayanan states that power of attorney holder must have knowledge about the relevant transactions. There can be no dispute about the fact that in this case, the power of attorney holder being the husband of the appellant has witnessed all transactions and he possesses due knowledge about them. He is associated with all transactions at all crucial stages. The appellant has placed this fact in the forefront in her complaint. The relevant paragraph of the complaint reads as under :*
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> *"3. The complainant is represented by her Power of Attorney Holder Mr. Sudhir Gulvady, her husband as the complainant is unable to come to the Court due to her not keeping good health and the whole transaction is also within the knowledge of her Power of Attorney holder who is her husband"."*

8. Interestingly, learned counsel for the respondent-complainant has relied upon both of the above-mentioned judgement but as per the material on record there is not even a whisper of the of the fact that SPA Mukesh Kumar, who is the husband of the respondent, had knowledge of the transactions pertaining to the present case, in the complaint filed by her. As per the ratio of law laid down in **A.C. Narayanan (supra)**, 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. The case of the petitioner is squarely covered by the ratio of law laid down in **A.C. Narayanan** ***(supra)*** as such, sufficient grounds are made out which warrants interference by this Court.

CONCLUSION

9. In view of the above discussion, the present petition is allowed. The criminal complaint No. 6288 dated 13.07.2016 (Annexure P-2) titled 'Poonam Verma vs. M/s Chadha Motors & others' filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and the impugned summoning order dated 14.07.2016 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Ludhiana, are hereby, quashed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

18.03.2024
Ajay Goswami

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