

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 41912 of 2024
Date of decision: 16.10.2024

Pragya Acharya ...Petitioner

Versus

BPC Technologies India Pvt. Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanjeev Chaudhary, Advocate
Mr. Shubham Budhiraja, Advocate and
Mr. Rahul Singh, Advocate
for the petitioner.

Mr. Aashish Bishnoi, D.A.G., Haryana.

Ms. Swati Batra, D.A.G., Punjab.

Mr. Rajiv Vij, Addl. P.P., UT, Chandigarh.

ANOOP CHITKARA, J.

Complaint Case No.	NACT/43065/2022 titled as “BPC Technologies India Pvt. Ltd. Vs Pragya Acharya”
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1. Seeking quashing of order dated 23.07.2024 passed in the complaint captioned above, the accused has come up before this Court under Section 528 BNSS, 2023 r/w 482 CrPC, 1973.

2. It would be relevant to extract the impugned order which has been annexed as Annexure P-2 and it reads as follows:-

“An authority to move any application, sign any pleading or other acts are given only through power of attorney and not through memo of appearance.”

3. The memorandum of appearance which has been annexed as Annexure P-4 does refer the name of three Advocates who were authorised and instructed to appear on behalf of the petitioner, however two advocates have put their signatures and their enrollment number points out that they were enrolled in Delhi and not in State of Punjab and Haryana. There is no reference about the third advocate whether he was enrolled in State of Punjab and Haryana or not.

4. It would also be appropriate to refer to Annexure P-5 which reads as follows:-

PART B-RULES MADE BY THE HIGH COURT OF PUNJAB AND HARYANA UNDER SECTION 34(1) OF THE ADVOCATES' ACT, 1961.

1. In these rules unless there is anything repugnant in the subject or context the word 'advocate shall include a partnership or a firm of advocates.

2. Save as otherwise provided for in any law for the time being in force, no advocate shall be entitled to appear, plead or act for any person in any Court in any proceeding unless the advocate files an appointment in writing signed by such person or his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and signed by the Advocate in token of its acceptance or the advocate files a memorandum of appearance in the form prescribed by the High Court:

Provided that where an advocate has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceedings merely for the purposes of pleading, to file a memorandum of appearance or to declare before the Court that he appears on instructions from the advocate who has already filed his appointment in the proceedings:

Provided further that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court amicus curie in any case or a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.

Explanation. A separate appointment or a memorandum of appearance shall be filed in each of the several connected proceedings, notwithstanding that the same advocate is retained for the party in all the party connected proceedings.

3. [1] [Advocate who is not on the Roll of Advocates:- An advocate who is not on the Roll of Advocates or the Bar Council of the State in which the Court is situated, shall not appear, act or plead in such Court, unless he files an appointment along with an advocate who is on the Roll of such State Bar Council and who is ordinarily practicing in such Court.]”

5. Given above, it was necessary for the Advocate to have either associated an advocate enrolled in State of Punjab and Haryana or to file their power of attorney which was not done.

6. Be that as it may, the trial Court did not reject the memorandum of appearance because of the violation of the rules but simply because of its limited scope which is contrary to the settled principles of law.

7. The nature of the order this court proposes to pass is such that no response is required from the complainant or the State.

8. I have heard learned counsel for the petitioner and the State of Punjab. I have also gone through the pleadings, and their analysis would lead to the following outcome.

9. Vakalatnama, or Memo of Appearance, is required before the Courts. Vakalatnama is an appointment of a lawyer for the case by a party and is an authorization for an Advocate to represent a party until such authorization ceases, and thus, it eliminates the need to seek authorization on every date. Vakalath casts a duty on the Advocate to represent on all dates, whereas the memorandum of appearance is an obligation only for the tendered date. In this case, counsel chose to file exemption application based on the authorization given to them on previous date, however, advocates representing the petitioner duly conveyed the difficulty of petitioner to not appear. In such a situation, the Court should grant some time to the petitioner to appear instead of issuing non-bailable warrants by giving clear direction to issue warrant on the ensuing dates or clarification qua not entertaining further exemption application giving reasons for that. As such, the order deserves quashing.

10. Petition allowed and order dated 23.07.2024 stands quashed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.10.2024
Jyoti Sharma

Whether speaking/reasoned:	Yes
Whether reportable:	YES.