



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

**121**

**CRM-M-38153-2022 (O&M)**

**Date of decision: 28.01.2026**

M/s. Knittex International Ltd.

...Petitioner(s)

VERSUS

M/s Hem Raj Bodh Raj and others

...Respondent(s)

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present :- Mr. G.S. Virk, Advocate and  
Ms. Simrandeep, Advocate for the petitioner(s).

Mr. Narinder Kumar Vadhera, Advocate  
for respondents No.1 and 2.

\*\*\*\*\*

**VINOD S. BHARDWAJ, J. (Oral)**

1. The instant petition has been filed under Section 482 of Cr.P.C. for quashing/setting aside the order dated 09.08.2022, passed by the Judicial Magistrate 1st Class, Ludhiana, in case bearing No.COMA-38770-2013 titled as 'M/s Hem Raj Bodh Raj Vs. M/s Knittex International', whereby the application filed by respondent No.2 for substituting his name as Proprietor in the Proprietorship Firm (respondent No.1) was allowed.

2. Learned counsel appearing on behalf of the petitioner contends that respondent No.1-complainant proprietorship firm had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner through his attorney Joginder Kumar Lamba for the dishonour of the cheque amounting to Rs.5,39,849/- dated 09.05.2001 bearing No.231840 drawn on State Bank of Patiala, Ludhiana for clearing the outstanding debt.



It is contended that the proprietor/Mohan Lal Lamba (father of Joginder Kumar Lamba), died on 18.10.2011. Respondent No. 2 continued pursuing the matter without informing of the death of the proprietor, notwithstanding that the power of attorney executed in his favour ceased to be in force after the principal died. He contends that at the fag end of the trial, respondent No. 2 moved an application before the trial Court, informing about the death of Mohan Lal Lamba and seeking his own substitution in place of the proprietor/Mohan Lal Lamba. The said application was allowed by the trial Court vide its impugned order dated 09.08.2022.

3. Counsel contends that respondent No.2 misled the Court for a period of nearly 11 years after the death of Mohan Lal Lamba and did not inform about the demise, notwithstanding that he was no longer an attorney. He contends that the application was allowed in an arbitrary manner without appreciating that the complaint should have abated on account of the death of the complainant in view of Section 256 Cr.P.C. It is argued with vehemence that upon the death of the principal proprietor, the proprietorship firm ceases to exist; hence, the complaint could not have been pursued any further, and that the only course available to respondent No.2/Joginder Kumar Lamba, in case he so desired, was to pursue the matter in his own right.

4. Learned counsel appearing on behalf of the respondents No.1 and 2 contends that Mohan Lal Lamba, father of respondent No.2, was the proprietor of M/s. Hem Raj Bodh Raj, and that the complaint in question had been instituted through respondent No.2 as the attorney. It is submitted that



respondent No.2 is the legal heir of Mohan Lal Lamba and had been authorized to pursue all issues for and on his behalf. An application was accordingly moved by him for substitution as a complainant so as to be permitted to prosecute as the petitioner herein in the aforesaid complaint. It is submitted that once he succeeded to the rights of the deceased proprietor/Mohan Lal Lamba, he would be within his rights to seek recovery of the debts and to pursue a complaint as assignee of such rights. Thus, the petitioner is arguing on a mere technicality and only to delay the proceedings from reaching finality before the Court.

5. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

6. The entire claim of the petitioner is that a proprietorship ceases to remain in existence after the death of its proprietor; hence, the attorney-respondent No.2 could not have been substituted as a proprietor of the said proprietorship. He, however, does not dispute that respondent No.2, as an assignee, could have nonetheless instituted the proceedings and pursued them in his individual capacity.

7. It would be necessary to refer to Section 256 Cr.P.C., in order to understand and analyze the argument by the petitioner, which reads thus:-.

“ **256. Non-appearance or death of complainant.-**

(1) *If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be*



*adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day;*

*Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.*

*(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”*

8. It is evident that even though the expression is mandatorily worded, the section also empowers the Court not to acquit an accused and to adjourn the hearing to some other day, for reasons it thinks proper.

9. It would also be necessary to refer to Section 302 Cr.P.C., which reads thus:-

*“(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission;*



*Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.*

(2) *Any person conducting the prosecution may do so personally or by a pleader.”*

10. It is evident from a perusal of the above that the law permits and empowers a Magistrate to permit, not only the complainant, but any other person to pursue and try a case.

11. The composite idea envisaged in the administration of criminal justice is that a person who is actually aggrieved is not altogether wiped out from the scenario. A criminal Court, while examining and trying an offence, does not sit as a moot spectator and is required to pitch in to forward the public interest and inspire public trust. Its participative role is contemplated and conceptualized at different places in Cr.P.C., which vest powers in the Courts to take decisions in the best interests of justice.

12. The decision whether to dismiss a complaint on death of a complainant has to be a reasoned decision. The vesting of discretion under Section 256 Cr.P.C. and the affirmative power to allow prosecution through another are conscious acts of the legislature. It thus did not mandate an automatic abatement of the complaint on the death of the complainant. The departure of the legislature in mandating the Magistrate to acquit an accused, as against abatement under Section 394 Cr.P.C. speaks volumes of the legislative intent. Hence, a reasoned acquittal, being the hallmark coupled with the power to prosecute through other persons, has to be viewed holistically and applied pragmatically, being driven by larger interest of



justice. Absence of a complainant is not a shortcut to disposal. Allowing any such premium to an accused, on a mere fortuitous event, would erode the efficacy of the justice delivery system and embolden an accused at the cost of the victim. The same would never have been the legislative intent. Hence, harmonious construction of provisions of Cr.P.C. needs to be carried out to advance the interests of justice.

13. A similar view was taken by the **High Court of Delhi** in the Criminal M. (M) No. 2723 of 1998 titled as '**Dior International (P) Ltd. and another Vs. Raghuvansh Enterprises**'. The Punjab and Haryana High Court allowed the heirs of the complainant to pursue and prosecute the appeal, after the death of the complainant, in the matter of '**Bhag Singh Vs. State of Punjab**' reported as **2001 CrILJ. 2997 (P&H)**. I am further fortified in my above view by the decision of this Court in **CRM-6063-M-2001** titled '**Harbans Singh Vs. Gulzar Singh**'. The relevant extract reads as under:-

*"10. From a perusal of the above, it would be clear that under sub-section (1), even where the complainant is absent from the court, the Magistrate is competent to adjourn the hearing of the case to some other day. It would also be clear that where the complainant is represented by a pleader or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. Under sub-section (2), it has been provided that the provisions*



*of sub-section (1) shall also apply to the cases where the non-appearance of the complainant is due to this death. This would mean that even where the complainant has expired during the pendency of the criminal complainant, the Magistrate is competent to proceed with the case. Section 256 sub-section (1) read with sub-section (2) clearly envisages a situation where the complainant has died and still the Magistrate is competent to proceed with the complaint, even after noticing that the complainant is dead.”*

14. In the matter of ‘**Aseem Shabanli Merchant v. Brij Mehra and Another**, reported as **(2005) 11 SCC 412**, the Hon’ble Supreme Court allowed the son of the deceased complainant to conduct prosecution and appoint counsel of his choice. Relevant extract of the order reads thus:-

*“3. From the material on record, it appears that both the complainant and his mother committed suicide on 5-3-2001 and his father also committed suicide two days later on 7-3-2001. The present appellant is the brother of the complainant and claims to be the legal heir-legatee of the deceased. It is true, as noticed in the impugned judgment and order, that on two earlier occasions also i.e. on 10-1-2002 and 4-4-2002, none was present for the complainant. Insofar as the absence of the advocate is concerned, it is evident that on the death of his client, he had no authority to appear. The order-sheet further shows that on the aforesaid two dates, even the accused was not*



*present.*

*4. Having regard to the facts and circumstances of the cases, we are of the view that interests of justice require that the order of the Magistrate dated 7-9-2002 acquitting the accused, as affirmed by the High Court by the impugned judgment and order, deserves to be recalled so that the complaints can be tried on merits in accordance with law. We may only note that there is no hard-and-fast rule regarding recalling of such orders.”*

15. A similar view was also taken by the Hon’ble Supreme Court in the matter of **Jimmy Jahangir Madan v. Bolly Cariyappa Hindley**, reported as **(2004) 12 SCC 509**. The position in law thus confers an authority on the Court to reflect pragmatism in the application of not just the letter but also the spirit behind the law. An interpretation, as suggested by the petitioner, would amount to providing a safe haven to an offender and signalling triumph to the detriment of the victim and add insult to his injury.

16. Moreover, petitioner does not dispute that respondent may, if so advised, file his own complaint as an assignee. Prescribing a probate before prosecution, in the name of technicality, does in no way advance the interests of justice. Hence, considering it on any parameters, I am unable to accept the arguments by the petitioner and hold them as lacking merit.

17. Under such circumstances, I find that the objection raised is more academic rather than serving any substantive purpose. A mere erroneous nomenclature would not suffice to terminate judicial proceedings





121

CRM-M-38153-2022 (O&M)

prematurely. Hence, merely because the Court, in its impugned order, treated him as a proprietor, in place of the earlier proprietorship, in my opinion, would not be sufficient to say that the proceedings before the trial Court ought to be quashed in its entirety.

18. Consequently, I am of the opinion that the present petition has been filed only to delay the finalization of the complaint, which has been pending before the Magistrate since 2012.

19. The present petition is *dismissed*.

(VINOD S. BHARDWAJ)  
JUDGE

28.01.2026

Mangal Singh

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No