

Cr Rev 567/2023
Vandana Bhawsinka
Vs.
M/s. Percision Mould & Dies Pvt. Ltd.

03.05.2024

Present: Sh. Rajan Chawla, Ld. Counsel for the petitioner.
Sh. Praveen Singhai, Ld. Counsel for the
respondent (through VC).

1. Arguments on the present revision petition are heard.
2. Case file and Trial Court record are carefully persued.
3. Vide present revision petition, the petitioner has assailed the order dated 17.02.2017 (hereinafter referred to in short as 'impugned order') of Ld. MM-02, NDD, PHC, New Delhi in a complaint case No. 2648/2017 instituted by the respondent company through its authorized representative Sh. Shiv Kumar Tyagi, Consultant against the petitioner herein for the offence u/s. 138 Negotiable Instruments Act (hereinafter referred to in short as 'NI Act') whereby the Ld. Trial Court took cognizance of the said offence, examined AR of the complainant/respondent u/s. 200 CrPC through his affidavit and on the basis of the complaint, affidavit tendered and documents annexed therewith, directed issuance of summons against the petitioner for facing trial u/s. 138 NI Act by invoking the provisions of Section 204 CrPC.
4. Ld. Counsel for the petitioner has contended that the impugned order is not legally sustainable as the purported AR for

the complainant was not authorized to institute the present complaint. He has further argued that the petitioner is resident of Cuttack, Orissa which is beyond the jurisdiction of the Ld. Trial Court and therefore, the Ld. Trial Court did not conduct imperative statutory inquiry u/s. 202 CrPC before invoking the provisions of Section 204 CrPC. He has further contended that even the notice sent by the respondent company after dishonour of the cheque in question is defective as it finds mention that the said cheque relates to a transaction with 'AASTHA ENTERPRISES'. In the said notice, it is not mentioned that the said cheque was issued in relation to any transaction with the petitioner. He has further contended that even otherwise, the purported AR of the complainant had neither witnessed nor had knowledge regarding the transaction between the parties that allegedly led to issuance of the cheque in question. Therefore, in view of the categorical findings in case titled as **A.C. Narayanan vs. State of Maharashtra & Anr., (2014) 11 SCC 790**, institution of this complaint by Sh. Shiv Kumar Tyagi, Consultant purported AR of the respondent was not permissible as per law. With these submissions, he has contended that the impugned order deserves to be set aside.

5. On the other hand, Id. Counsel for the respondent has contended that respondent company has authorized Sh. Shiv Kumar Tyagi to institute this complaint but due to inadvertence his proper authority letter could not be annexed with the complaint. In respect of notice also, he has submitted that it was an inadvertent typographical error. In response to other

submissions regarding competence of AR, he has submitted that whether he was conversant with the facts of the complaint or not is a matter of trial and it cannot be held at this stage that he lacks knowledge of the transaction qua the cheque. He has, therefore, contended that there is no illegality or error in the impugned order and the defects pointed out by the petitioner are inadvertent typographical error that can be cured during the trial.

6. The present complaint u/s. 138 NI Act was instituted on 17.02.2017 against the petitioner by Sh. Shiv Kumar Tyagi, Consultant claiming himself to be AR of the respondent company on the basis of the cheque dated 10.12.2016 for an amount of Rs.3,44,244/- drawn at Allahabad Bank allegedly issued by the petitioner in favour of respondent company. Section 142 NI Act provides that notwithstanding anything contained in the Code, no Court shall take cognizance of any offence punishable under Section 138 of the Act except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. In the instant case, the alleged payee is the respondent company. Therefore, as per Section 142 NI Act only the said company could have instituted this complaint, in absence thereof, the cognizance of the complaint is not legally permissible.

7. This complaint has been filed by Sh. Shiv Kumar Tyagi, Consultant on the strength of an authority letter Ex.CW1/1 dated 06.02.2017 purportedly executed by Sh. Guljeet Singh Kochhar, Managing Director of respondent company in his favour. However, as per the said document, Sh. Guljeet Singh Kochhar,

Managing Director of respondent company has authorized Sh. Shiv Kumar Tyagi, Consultant for representing the respondent company in connection with the cases U/s. 138 NI Act against 'AASTHA ENTERPRISES'. Admittedly, the petitioner has no concern with the 'AASTHA ENTERPRISES' and the present complaint was not instituted against 'AASTHA ENTERPRISES'. Therefore, the said authority letter is of no consequence for instituting the present complaint on behalf of the respondent against the petitioner herein. Thus, Sh. Shiv Kumar Tyagi, Consultant purported AR of the respondent company has no *locus-standi* to institute the present complaint on behalf of the respondent for the offence u/s. 138 NI Act.

8. The Ld. Trial Court has failed to take into account that the complaint was not supported by any proper document/authority letter purportedly authorizing Mr. Shiv Kumar Tyagi, Consultant to institute this complaint on behalf of the respondent against the petitioner. Furthermore, till date, no amendment application has been moved by the respondent company to cure the said inherent defect in the complaint. Thus, it is apparent that the respondent company has been nonchalantly and purfunctorily continuing with the inherently defective complaint for the last more than seven years. Further, the complaint is *non est* for being instituted by an unauthorized person in violation of Section 142 NI Act. Therefore, even otherwise, the said foundational defect in the complaint which relates to locus-standi in its institution can not be justifiably cured by way of an amendment after inordinate delay of more than seven years as it strikes at the root of the

complaint regarding its institution within the time frame as provided in the Negotiable Instruments Act, 1881. The Hon'ble Apex Court in case titled as **Manish Kumar Gupta vs. M/s. Mittal Trading Company, 2024 Livelaw SC 339** held that as the date of cheque is a relevant aspect in relation to the time frame as provided under Negotiable Instruments Act, 1881, amendment in the complaint to rectify the typographical error in the date of the cheque is not justified.

9. In view of above discussion, the Ld. Trial Court has gravely erred in taking cognizance of the said defective and improper complaint by an unauthorized person. Thus, the impugned order of taking cognizance of the complaint cannot be sustained in the eyes of law for being barred by Section 142 NI Act. Accordingly, the impugned order is hereby set aside and the revision petition is allowed.

10. The TCR be returned, along with copy of this order, for its consignment to the record room through the Ld. Trial Court.

11. As prayed, a copy of this order be given *dasti*.

12. Revision file be consigned to the record room after due compliance.

(Dheeraj Mor)
Addl. Sessions Judge-06,
NDD/PHC/ND/03.05.2024