

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-18136 of 2014 (O&M)

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Date of decision:15.9.2016

Anita Gupta

...Petitioner

v.

M/s Maa Durga Cotton Mills and others

...Respondents

....

(2) Criminal Misc. No.M-18661 of 2014 (O&M)

.....

Anita Gupta

...Petitioner

v.

M/s Maa Durga Cotton Mills and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vivek Salathia, Advocate for Mr. Ashish Aggarwal,
Advocate for the petitioner.

Mr. Jaideep Vema, Advocate for respondent No.1.

Mr. Aseem Kataria, Advocate for respondents No.2 and 3.

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Inderjit Singh, J.

This order will dispose of the above mentioned two criminal miscellaneous petitions filed under Section 482 Cr.P.C. for quashing of the orders dated 20.7.2013 passed by learned Additional Sessions Judge, Fazilka allowing the revision petitions filed by M/s Maa Durga Cotton Mills challenging the orders dated 22.9.2012 passed by learned Sub Divisional Judicial Magistrate, Fazilka, whereby only accused Anil Sharma

(respondent No.3 herein) was ordered to be summoned for 7.1.2013.

Notice of motion was issued in these cases.

Mr. Jaideep Verma, learned Advocate has put in appearance on behalf of respondent No.1 and Mr. Aseem Kataria, learned Advocate has appeared for respondents No.2 and 3 and contested these petitions.

I have heard learned counsel for the petitioner and learned counsel for the respondents and have gone through the record.

From the record, I find that two complaints were filed by M/s Maa Durga Cotton Mills (respondent No.1 herein) through its partner Sham Lal-complainant against M/s Abhitex Enterprises through its partner/proprietor Anita Gupta; Anita Gupta and Anil Sharma under Section 138 of Negotiable Instruments Act, (hereinafter referred to as 'NI Act') read with Section 420 IPC at Police Station City Fazilka. Both these petitions are being taken up for hearing together as the points for determination in both the petitions are same. In both the cases learned Sub Divisional Judicial Magistrate, Fazilka vide orders dated 22.9.2012 after going through the preliminary evidence dismissed the complaints by holding that there is no sufficient evidence on record that remaining accused are partners or that the accused is a partnership concern. Hence the complaints qua the accused No.1 and 2 were ordered to be dismissed and accused No.3-Anil Sharma was only summoned, who signed the impugned cheques. Against these orders revision petitions were filed by M/s Maa Durga Cotton Mills through its partner Sham Lal-complainant against M/s Abhitex Enterprises through its partner/proprietor Anita Gupta, Anita Gupta and Anil Sharma.

As per the record, the revision petitions against respondent No.3-Anil Sharma were withdrawn by the complainant and service of M/s Abhitex Enterprises and Anita Gupta was dispensed with by the Court which means that no notice was issued to the respondents-M/s Abhitex Enterprises and Anita Gupta, who were not summoned in the complaints and these revisions petitions were filed aggrieved from the orders passed by the learned Sub Divisional Judicial Magistrate and seeking the relief for summoning these accused i.e. M/s Abhitex Enterprises through its partner/proprietor Anita Gupta and Anita Gupta. As per sub-section (2) of Section 401 Cr.P.C., the revisional Court cannot pass any adverse order against the respondent-accused or any other person without giving him opportunity of being heard or in other words without giving any notice. As no notice had been given to M/s Abhitex Enterprises and Anita Gupta and the learned Additional Sessions Judge had passed the adverse orders by setting aside the orders passed by the learned Sub Divisional Judicial Magistrate by allowing these revision petitions and accused No.1 and 2 were ordered to be summoned. As these orders had been passed without giving notice to the present petitioner against the specific provisions of law, therefore, the orders passed by the learned Additional Sessions Judge in the revision petitions are illegal and set aside.

Therefore, finding merit in the present petitions, the same are allowed.

The matters are remanded back to the learned Additional Sessions Judge, Fazilka, to decide the revision petitions on merit as per law

after giving notice and opportunity of being heard to the respondents
(present petitioner) in those petitions.

The parties are directed to appear before the learned Additional
Sessions Judge, Fazilka (revisional Court) on 17.10.2016.

September 15, 2016.

(Inderjit Singh)
Judge

hsp

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