IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-33396 of 2014 (O&M)

Khera Constructors Co. & Brick Kiln and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(ii) CRM No.M-36415 of 2014 (O&M)

Khera Constructors Co. & Brick Kiln and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(iii) CRM No.M-36453 of 2014 (O&M)

Khera Constructors Co. & Brick Kiln and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

Date of Decision: May 05, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tarundeep Singh, Advocate
for the petitioners.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Ashish Aggarwal, Advocate
for respondent No.2.

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INDERJIT SINGH, J.

This order shall dispose of above-mentioned three connected cases as the point for determination in all the cases is the same.

The above-mentioned petitions have been filed by petitioners for quashing of order dated 17.09.2014 passed by learned Judicial Magistrate Ist Class, Amritsar, vide which the application under Section 311 Cr.P.C. filed by the petitioners was dismissed.

Notice of motion was issued in all the cases and learned State counsel and learned counsel for respondent No.2 in each case appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that application was filed by accused-petitioners under Section 311 Cr.P.C. for recalling the complainant for cross-examination. It is mainly stated in the application that complainant was supplier of the coal to Khera Constructors Company and Brick Kiln. A complaint has been filed under Section 138 of the Negotiable Instruments Act. It is further stated that no proof of supply of coal has been placed or proved on record by the complainant. When the record of complainant was summoned in defence, complainant produced two invoices bearing No.6 dated 18.03.2010 for ₹2,86,296/- and bearing No.7 dated 19.03.2010 for ₹3,01,160/- and mentioned some truck numbers. It is also stated that accused-company got the verification from the concerned DTO offices and found that those numbers are the numbers of scooters and mopeds. It is also in the application that accused has also summoned the record from the Excise and Taxation Department regarding the VAT. The complainant company paid the VAT for the period from 01.10.2010 to 31.12.2010 but no VAT was paid from 01.04.2012 to 31.03.2013. The complainant firm has also supplied the ledger account but has not supplied the first page of the ledger account. Therefore, material questions are to be put.

Learned JMIC, Amritsar, dismissed the application by stating that there is no mention of any particular questions in the application, which the petitioners intend to put to the witness. It is also held by learned Magistrate that trial of the case has already been completed and both the parties have led their respective evidence on record and the applicant has moved this application to delay the case. It is also in the order that accused have not been able to show that how it is essential to further cross-examine the complainant for just decision of the case.

From the perusal of the order and record, I find that the findings given by learned JMIC, Amritsar are correct, as per evidence and law. No illegality has been committed by learned JMIC, Amritsar while passing the impugned order. If the complainant has not produced any record and the accused has got produced the record, then there is no need to summon the complainant. If the accused has got verified that those truck numbers are actually of scooters and mopeds etc., then this fact can be proved from the office of DTO by summoning the Clerk of the DTO Office and not from the cross-examination of the complainant. Again, if the VAT has not been paid, then it is to be proved by the Clerk of the Excise and Taxation Department and no cross-examination of the complainant is necessary.

In a complaint under Section 138 of the Negotiable Instruments Act, the accused is to rebut the presumption under Section 139 of the Act and to raise probable defence. From the perusal of the record, there is nothing that which material questions the accused wants to put to the complainant. Therefore, further cross-examination of the complainant is not required. These facts, which are alleged by the accused in the application, can be proved by bringing defence evidence.

Therefore, finding on merit in all the petitions, the same are dismissed.

May 05, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**