

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

**CRM No.M-34299 of 2017 (O&M)
Date of Decision: December 20, 2017**

M/s Manish Kumar Aggarwal

...Petitioner

VERSUS

M/s Jain Building Material and Glass House

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sachin Bhardwaj, Advocate
for the petitioner.

Mr.Tapan Yadav, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner M/s Manish Kumar Aggarwal has filed this petition under Section 482 Cr.P.C. against respondent M/s Jain Building Material & Glass House for setting aside the order dated 19.05.2017 passed by learned Judicial Magistrate Ist Class, Narnaul, whereby the prayer of the petitioner for production of ledger accounts, cash books and bahis has been dismissed etc.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that during the statement of the

complainant party, a request was made by learned counsel for the accused for production of bahi entries, cash books, ledger entries etc. from complainant seeking to verify entries pertaining to transactions, which was opposed by learned counsel for the complainant-respondent by urging that it is for the complainant to produce what evidence he wishes to lead and said evidence may be procured in defence evidence by summoning relevant documents at that stage. Learned trial Court, vide impugned order dated 19.05.2017, considered it appropriate that said record may be summoned at the stage of defence evidence.

Aggrieved from the order dated 19.05.2017, present petition has been filed.

The perusal of the record shows that the order passed by learned Magistrate during the recording of the statement of the complainant's witness, declining to ask the witness to produce the record, is not as per law. There is no dispute that account books are maintained by the complainant firm. The complainant is producing the bills which the accused is alleging as fake. The account books are necessary to determine the dispute between the parties substantially. The entries in the account books are to be confronted with the complainant during the evidence. If these books are not allowed to be produced, then the substantial right of confronting the witness with its record, which is maintained by the complainant, will be defeated. A great prejudice would be caused to the accused to support and corroborate his defence.

In the case under Section 138 of the Negotiable Instruments Act, presumption arises against the accused if the cheque is handed over by the accused to the complainant, which is duly signed by the accused. The

accused can rebut the presumption by raising defence, which should look probable and it can be shown even from the case of the complainant. If the account books are not produced and the entries are not confronted with the witness, then it will cause prejudice to the defence of the accused.

In view of the above discussion, I find that the impugned order dated 19.05.2017 declining the production of account books etc., passed by learned JMIC, Narnaul, is not as per law and the same is set aside. The request of the accused-petitioner to ask the complainant to produce the alleged account books etc. is allowed. Learned trial Court is directed to recall the complainant with the direction to produce account books etc.

Finding merit in the present petition, the same is allowed accordingly.

December 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No