

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

**CRR No.4010 of 2016 (O&M)
Decided on: 07.09.2017**

M/s Aggarwal Enterprises Bhuchho Bypass

....Petitioner

Versus

M/s Kang Music & T.C. Center and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Munish Garg, Advocate
for the petitioner.

Mr. J.K. Singla, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 13.10.2016 passed by the trial Court vide which the application filed by the petitioner/complainant under Section 311 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was dismissed.

Counsel for the petitioner has submitted that he has moved an application dated 28.09.2016 (Annexure P2) before the trial Court to examine the Accountant of the petitioner – firm namely Diyal Chand as he used to maintain all the accounts of the firm relating to their transactions. The said application was contested by the respondents/accused and the trial Court vide order dated 13.10.2016 dismissed the same.

A perusal of the order dated 22.09.2016 passed by the trial Court would show that the evidence of the petitioner/complainant was closed by Court order dated 22.09.2016, noticing that on that day only

one CW – Mangat Ram was present and was examined. It was also observed that the complainant has already availed several opportunities to conclude the evidence but failed to do so. The case, thereafter, was adjourned to 28.09.2016 for recording the statement of accused under Section 313 Cr.P.C.

It is a matter of record that the order dated 22.09.2016 was never challenged by the petitioner by way of filing any revision and the petitioner has rather moved an application under Section 311 Cr.P.C. seeking permission to examine the aforesaid person namely Diyal Chand. It is also a matter of record that in the list of witnesses attached to the complaint, filed under Section 138 of the Negotiable Instruments Act, Diyal Chand was never cited as one of the witness and, therefore, the trial Court dismissed the application as the petitioner want to fill *lacunas* in his evidence.

Counsel for the respondent has submitted that the petitioner has already availed number of opportunities and subsequent to passing of the order dated 22.09.2016 vide which the evidence of the petitioner was closed by Court, after recording the statement of the respondent/accused under Section 313 Cr.P.C., the case is fixed for recording the defence evidence.

After hearing the counsel for the parties, I do not find any ground to interfere in the order dated 13.10.2016 passed by the trial Court as the petitioner has neither challenged the order dated 22.09.2016 nor has assigned any reason in the application (Annexure P2) as to why the witness namely Diyal Chand was not cited as a witness in the list of witnesses attached with the complaint. Even no

reason has been given that when the evidence of the complainant was going on, the permission to examine the said witness, though, not a cited witness was sought from the trial Court.

For the foregoing reasons, the revision petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

07.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No