

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

- (1) Crl. Misc. No.M-1680 of 2019 (O&M)
 Date of Decision: September 03, 2019**
- (2) Crl. Misc. No.M-1683 of 2019 (O&M)**
- (3) Crl. Misc. No.M-1730 of 2019 (O&M)**
- (4) Crl. Misc. No.M-1771 of 2019 (O&M)**

M/s Neel Kanth Industries

.....PETITIONER

VERSUS

M/s M.K.Industries and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.Arav Gupta, Advocate
 for the petitioner.

Mr.Yashdev Kaushik, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

In complaint under Section 138 of Negotiable Instruments Act
filed by M/s Neel Kanth Industries through Sushil Kumar, authorised
signatory, an application was filed by the complainant to produce and prove
the following documents:

- (i) Authority letter of complainant in favour of Sushil Kumar;
- (ii) Form-C;
- (iii) Form-XXXVI-A;
- (iv) Declaration and bank authority letter of Kotak Mahindra
Bank and
- (v) Audit report of CA.

The complainant has also sought permission to examine Anita Aggarwal, proprietor of the complainant firm as a witness. The application was dismissed by the learned trial Court with the observations in para 3 as follows:

After hearing arguments from both the parties and perusal of the case file shows that in the present case, cross-examination of the complainant was completed on 12.04.2018 and all the relevant questions regarding proprietorship/authority letter have been asked by defence counsel to the complainant. Thereafter, the present application has been filed which shows that the present application has been filed only to fill up the lacuna of the case. It is well settled law that an application under Section 311 of Cr.P.C. cannot be allowed to fill up the lacunas of the case. Further, the complainant did not mention any sufficient cause for not leading the alleged evidence at the time of recording of preliminary evidence. Furthermore, if the present application is allowed at this stage, denovo trial will start and serious prejudice will be caused to the accused. Hence, in these facts and circumstances, the present application is not maintainable and is dismissed.

The revision filed by the complainant was dismissed by the Additional Sessions Judge, Faridabad with the observations that the same is not maintainable.

Learned counsel for the petitioner submits that Anita Aggarwal is a proprietor of complainant firm. She had authorised her husband-Sushil Kumar to file the complaint but due to inadvertence on the part of learned counsel for petitioner, his authority letter was not produced on record and the other documents sought to be produced are official documents which cannot be created at this stage. Complainant i.e. Anita Aggarwal herself

wants to appear as witness to explain the lapse. The observations of the learned trial Court that she had tried to fill up the lacuna or has not given any reason for not leading this evidence at the earlier stage has no relevance when the complainant has explained the facts in her application.

Learned counsel for the respondent submits that the application filed by the petitioner under Section 311 Cr.P.C. is an attempt to fill up the lacuna as Sushil Kumar, who is alleged to be authorised signatory of complainant was cross-examined at length and he had specifically stated in his statement that he does not possess any authority letter. Now the complainant intends to cover up the statement of Sushil Kumar by producing the authority letter and also by examining herself.

It is alleged that Anita Aggarwal is the sole proprietor of complainant-M/s Neel Kanth Industries. Being the sole proprietor, she can appear as a witness and explain the entire facts of the complaint. So far as the documentary evidence is concerned, the same are mostly official documents which can not be prepared at this stage and no prejudice will be caused to the respondents by producing these documents. The complainant is alleging that there was authority letter in favour of Sushil Kumar which has not been produced on file. It is a complaint under Section 138 N.I. Act. The complainant wants to appear to explain all the facts and also the authority given to Sushil Kumar. The respondents will have opportunity to cross-examine her and to test the veracity of her statement. Declining of opportunity to the complainant to produce the documents and permission to the complainant to appear herself will cause great prejudice to her case, while on the other hand no prejudice will be caused to the respondents, if

she is allowed to appear as witness and produce official documents.

Learned trial Court has not looked into this aspect while declining the applications filed by the complainant.

The order of learned trial Court is perverse and not sustainable in the eyes of law, as such, the same is set aside. These petitions are allowed. The applications filed by the petitioner under Section 311 Cr.P.C. are allowed and the trial Court is directed to allow permission to the complainant to lead evidence as per her application.

September 03, 2019

Jyoti-II

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No