

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

CRM-M-11560-2017 (O&M)

Date of decision : 18.07.2019

Ankur Joshi and another

...Petitioners

Versus

Sharad Aggarwal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jitender Dhanda, Advocate for the petitioners.

Mr. Naveen Sharma, Advocate for respondent Nos.1 and 2.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Prayer of the accused under Section 311 Cr.P.C. for summoning the complainant for cross-examination has been rejected.

This Court had summoned the record and examined zimni orders. After appearance of the accused pursuant to the order of summoning as required under law, necessary application under Section 145(2) of the Negotiable Instruments Act was not filed. It is the case of the petitioner-accused that the previous counsel did not defend the case on behalf of accused properly. He has further drawn attention of the Court to order dated 12.07.2016 when accused filed an application for permission to deposit the cheque amount. However, since the complainant did not agree, therefore, the aforesaid permission was refused. He submits that the application filed

by the petitioners is bona fide and only the complainant is required to be cross-examined.

On the other hand, learned counsel for the respondent-complainant has submitted that no application under Section 145(2) of the Negotiable Instruments Act was filed at appropriate stage and hence, the accused has forfeited his rights.

No doubt, application under Section 145(2) of the Negotiable Instruments Act ought to have been filed by the accused on appearance after notice of accusation was served, however, keeping in view the facts of the case and more particularly the offer made by the accused to pay the amount, this Court is of the opinion that the accused is entitled to defend the case. In absence of cross-examination of the complainant, serious prejudice shall be caused to the case of the accused.

Keeping in view the aforesaid facts, order under challenge is set aside.

Learned trial Court is directed to direct the complainant to come for cross-examination. However, this opportunity shall be subject to the payment of costs of ₹5,000/-.

In view of the above, the present petition is allowed.

18.07.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No