

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

CRM-M-31850-2019 (O&M)

Date of decision : 01.10.2019

M/s Innovative Pest and another

...Petitioners

Versus

M/s Ncube India Services Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. T.S. Sangha, Sr. Advocate with
Mr. D.S. Randhawa, Advocate and
Mr. P.S. Jammu, Advocate for the petitioners.

Mr. Diwakar Singh, Advocate and
Mr. Rajesh Kumar Maurya, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by the Judicial Magistrate, Ist
Class dated 20.05.2019, affirmed in revision by the Court of Sessions.

The petitioner is accused in a complaint under Section 138 of the
Negotiable Instruments Act. Complainant in its evidence examined CW1 Luv
Shastri who was working as Assistant Legal Manager with the complainant
company since 22.09.2016. He has stated that he has no knowledge about any
transaction of the complainant company prior to 2016. He also states that he
does not know who was the authorized Distributor of the complainant company
in Calcutta from 2013 to 2016. He further feigned his ignorance as to who is
Amit Jindal, Vijay Sharma, Ajay Acharya, Suraj Srivastav, Subhmjit Shah,
Amar Patel and Jitender Sharma. The petitioner company was a distributor of
the products of the complainant. Accused-petitioner has pleaded that the
aforesaid two cheques were blank cheques given to Vijay Sharma at the time
when the distributorship was given to the accused-firm. When the case was

fixed for defence evidence, accused-petitioner filed an application for summoning Amit Jindal who had worked for complainant company for 4-5 months in order to prove that cheques in question were blank security cheques. The aforesaid application has been rejected by the learned Judicial Magistrate on the ground that in the application, it has not been disclosed as to what is the relevance of examination of Amit Jindal. Learned Court of Sessions dismissed the revision petition on the ground that the case of the complainant is based on account books and initial onus to prove that the cheque is for a liability is on the complainant.

The Court also observed that when the petitioner was examined under Section 313 Cr.P.C., he has taken up the defence that the cheques in question were blank signed security cheques which were given to the complainant company as security. However, it has not been alleged by the petitioner-accused that the cheques were given to Amit Jindal, a representative of the complainant company.

This Court has heard learned counsel for the parties and with their able assistance gone through the paper book.

As per Section 243 read with Section 247 of Cr.P.C., the accused has a right to enter upon his defence and lead evidence. Magistrate has a power to reject the prayer made for the purpose of summoning witness on the ground that such examination of proposed witness would be vexatious, result in delay of the trial or would defeat the ends of justice. In the present case, neither Judicial Magistrate nor the Court of Sessions has found that the examination of Amit Jindal would result in the aforesaid grounds which have been noticed above. At the cost of repetition, it is apparent that when Luv Shastri was examined, he feigned ignorance and stated that he has no knowledge of the acts or actions

between the parties before September, 2016. Amit Jindal is alleged to be a representative of the complainant company who can throw light on the facts of the case. The observation made by the learned District Judge that the case of the complainant company is based on account books, is also wrong because proceedings under Section 138 of the Negotiable Instruments Act are not for settlement of the accounts. Complainant is alleging that accused firm and its partners are guilty of criminal offence under Section 138 of the Negotiable Instruments Act. Accused has a right to defend itself. When the petitioner was examined under Section 313 Cr.P.C., he has stated that blank signed cheques and other cheques were given to the complainant company at the time when distributorship was awarded in favour of the accused. Hence, evidence of Amit Jindal is relevant for proving the defence. Amit Jindal is representative of the complainant company.

Keeping in view the aforesaid facts, orders under challenge are set aside. Petitioner would be granted opportunity to examine Amit Jindal.

Learned counsel for the complainant prays that he may be granted opportunity to lead rebuttal evidence.

This Court does not find itself in a position to grant such opportunity. The complainant would be at liberty to move application, if any, maintainable in accordance with law which shall be decided by the Court.

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

01.10.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No