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

**CRM-M-10622-2020 (O&M)
Date of Decision: 26.07.2022**

Rajesh Rana

..... Petitioner

Versus

M/s Gupta Trading Co.

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ramesh Hooda, Advocate,
for the petitioner.

Mr. Arun Bansal, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed for challenging the order dated 29.02.2020 passed by the learned trial Court only to the extent whereby the prayer of the petitioner for summoning witness mentioned at serial No.2 of the application has been declined.

Learned counsel for the petitioner has submitted that in pursuance of the impugned order, the witness mentioned at serial No.1 was summoned but the trial Court refused the summoning of the witness mentioned at serial No.2 only on the ground that there is no mention of the time in the application as to when the cheque in question was allegedly received by the complainant. He further submitted that the witness mentioned at serial No.2 is the material witness and his evidence will go into the root of the controversy and no prejudice will be caused in case the witness No.2 is also summoned, since the matter is still at the defence stage.

He also submitted that even during the hearing of the aforesaid application before the learned trial Court, the learned counsel for the respondent/complainant has rather not objected to the prayer of the petitioner but despite the same, the application was partly allowed *qua* the witness mentioned at serial No.1 but declined for witness mentioned at serial No.2.

Mr. Arun Bansal, Advocate has appeared on behalf of the respondent and has submitted that it is correct that during the course of argument before the learned trial Court when the impugned order was passed, the learned counsel for the respondent did not object for summoning of the witness mentioned at serial No.2. He further submitted that the petitioner has filed the present petition only for the purpose of delaying the proceedings.

I have heard the learned counsel for the parties.

The trial of the case which pertains to Section 138 of the N.I. Act is at the defence stage. The petitioner had filed an application vide Annexure P-5 for summoning of the two witnesses for his defence. By way of the impugned order (Annexure P-6), the trial Court allowed the summoning of witness mentioned at serial No.1 but declined the summoning of witness mentioned at serial No.2. The witness mentioned at serial No.2 is said to be concerned clerk of the General Hospital, By-Pass, Kaithal along with record pertaining to date of posting and Attendance Register dated 31.08.2013 of Narender Kumar, who is one of the Directors of the Company. Learned counsel for the petitioner has submitted that his evidence was necessary so as to show that no cheque was delivered on the

said date and therefore, this goes to the root of the controversy of the issue which involves the issuance of the cheque and for the purpose of proving his case as a defence, the aforesaid witness was necessary. The argument raised by the learned counsel for the petitioner carries weight and since the trial is already at the stage of defence evidence, no prejudice will be caused to the other party in case one opportunity is granted to the petitioner to examine the aforesaid witness mentioned at serial No.2 of the application (Annexure P-5).

In view of above, the present petition is allowed and the order dated 29.02.2020 is hereby set aside to the extent that the summoning of the witness mentioned at serial No.2 was declined. The Court shall permit the summoning of the witness mentioned at serial No.2 and in the event of his appearance, the said witness will be examined within a period of 4 weeks commencing from the date which has been fixed by the learned trial Court and the petitioner will also get the summons served upon the witness concerned by Dasti process. However, there shall be no order as to cost.

26.07.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |