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

**203**

**Date of decision: 17.05.2022**
**CRM-M-34237-2015**

**M/S RANAM INDUSTRIES AND OTHERS ... Petitioners**

**Versus**

**M/S CHUGH PLASTICS ... Respondent**

**2. CRM-M-34238-2015**

**M/S RANAM INDUSTRIES AND OTHERS ... Petitioners**

**Versus**

**M/S CHUGH PLASTICS ... Respondent**

**3. CRM-M-34239-2015**

**M/S RANAM INDUSTRIES AND OTHERS ... Petitioners**

**Versus**

**M/S CHUGH PLASTICS ... Respondent**

**4. CRM-M-34240-2015**

**M/S RANAM INDUSTRIES AND OTHERS ... Petitioners**

**Versus**

**M/S CHUGH PLASTICS ... Respondent**

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. R.S.Bajaj, Advocate
for the petitioners.

Mr. Sandeep Arora, Advocate
for the respondent.

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**<u>VINOD S. BHARDWAJ. J.(Oral)</u>**

As a common question arises in the present batch of the four criminal miscellaneous petitions that have been filed on behalf of the petitioner, the same are being decided by a common order with the consent of the parties.

2. The dispute in brief leading to the filing of the instant petitions emanates from institution of a complaint by the respondent M/s Chugh Plastics before the Judicial Magistrate First Class, Jalandhar for commission of offences under Section 138 of the Negotiable Instruments Act, 1881 against petitioners-accused herein. It was alleged in the said complaint that the petitioners-accused had purchased plastic goods from the respondent-complainant on bill basis and that as per the statement of account of the complainant, regularly maintained during the course of business, a sum of Rs.14,29,219.30 was due against the petitioner-accused. In order to discharge the said legal liability towards the respondent-complainant, the petitioner issued various cheques all drawn on Lord Krishna Bank Limited duly signed by the authorized signatory of the petitioner-accused persons. It is contended that when the said cheques were presented to the Bank for encashment, the same was returned dishonoured by the Bank vide memo of different dates with the remarks “Exceeds Arrangement”. A legal notice as per the mandate of Section 138 of the Negotiable Instruments Act, 1881 was served and upon failure of the petitioner-accused to repay the amount, the complaint in question was instituted.

3. Learned counsel appearing on behalf of the petitioner points

out that initially upon examination of the complainant-respondent, the cross-examination, was treated as nil. The petitioners thus moved an application under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.) to recall the respondent-complainant so that the cross-examination could be conducted. However, the said application submitted by the petitioner-accused was dismissed by the trial Court whereupon a criminal miscellaneous petition was filed before the High Court. The said petition was allowed and the petitioner-accused was granted an opportunity to cross-examine the respondent-complainant. He submits that after the evidence of the complainant was recorded and the cross-examination concluded, the matter was fixed for recording of the statement of the petitioners under Section 313 Cr.P.C. when an application was submitted by respondent-complainant under Section 311 Cr.P.C. for examining the accountant of the Firm. He has made a reference to the prayer so made in the said application and extracted in Paragraph No.4 of the instant petition which reads as under :-

> *“3. That the complainant wants to examine the accountant of his Firm so that the bills and the accounts pertaining to the Firm of the complainant with the Firm of the accused persons may be brought to the file.”*

4. It is thus argued that the prayer by the respondent-complainant was restricted to examine the Accountant of the firm so that the bills of the account pertaining to the Firm of the complainant and the petitioner-accused could be brought on the file. The said application was however dismissed by the trial Court whereupon the respondent-complainant preferred petition bearing Criminal Miscellaneous No.

14559-2014 titled as ‘M/s Chugh Plastics versus M/s Ranam Industries and others’ along with the connected batch of petitions. It is contended that the aforesaid criminal miscellaneous petitions were allowed vide order dated 06.08.2015. The relevant extract of the said order is reproduced herein below:-

> *“Learned counsel for the petitioner submits that after cross-examination of the complainant, opportunity to lead further evidence was not granted and the case was straight away fixed for recording statement under Section 313 Cr.P.C.*
>
> *The petitioner wants to examine only his accountant with books of accounts and that the witness will be produced only on one opportunity.*
>
> *Looking into the aforesaid facts, especially when initially the complainant was not supposed to lead further evidence when his cross-examination was treated as nil, the petitioner had the right to examine his accountant in further evidence.*
>
> *The instant petition is allowed setting aside the impugned order dated 22.04.2014 (Annexure P-4) and petitioner would be granted only one opportunity to produce his witness i.e. accountant alongwith account books on one date to be fixed by the learned trial Court.*

5. It is contended that after the respondent-complainant had been granted an opportunity to produce his witness i.e. Accountant along with accounts books on one day fixed by the trial Court, the respondent-complainant submitted an affidavit by way of evidence of Paramvir Singh, the Accountant and along with the said application, he also tendered the documents viz. registration certificate as Ex.CW2/1, Ex.CW2/2 and certificate issued by the Excise and Taxation Department Ex.CW2/3, attested copies of bills Ex.CW2/4 to Ex.CW2/83, bank return Ex.CW2/84

to Ex.CW2/198, statements of accounts Ex. CW2/199 to Ex.CW2/207. The tendering of the aforesaid documents along with the affidavit of the Accountant was objected to by the petitioners-accused and an application was submitted on behalf of the petitioners for rejection of the said affidavit as it is not in consonance with the orders passed by the High Court in CRM-M-14559 of 2014 on 06.08.2015. The said application was decided by the Judicial Magistrate First Class, Jalandhar vide order dated 11.09.2015 whereby the applications/objections of the petitioner were partly allowed and the affidavit Ex.CW2/A tendered by the witness Paramvir Singh while appearing as CW-2 was ordered to be read only to the extent of accounts books Ex.CW2/199 to Ex.CW2/207 and the bills Ex.CW2/4 to Ex.CW2/83 and the remaining documents relating to the VAT registration certificates, certificate issued by the Excise and Taxation Department and the VAT returns were disallowed. Still aggrieved of the said order, the present petitions have been filed by the petitioner-accused.

6. Learned counsel appearing on behalf of the petitioners vehemently argues that the order passed by the Judicial Magistrate First Class is in conflict with the order dated 06.08.2015 passed by this Court whereby the respondent-complainant was allowed to only examine one witness along with account books and his statement in that regard was duly recorded. After such statement having been recorded, the bills that are sought to be produced and as have been allowed to be exhibited by the trial Court are an over-reach and that it is based upon mis-interpretation of the order passed by the High Court on 06.08.2015.

7. Per contra, Mr. Sandeep Arora, Advocate appearing on behalf of respondent has argued that the High Court had allowed the respondent-

complainant to produce evidence of the accountant along with account books and that the bills were only a corroborative piece of evidence to prove the entries made in the books of accounts and hence, they were integral to produce so as to authenticate and verify the entries made in the account books. He submits that the bills are themselves a part of the accounts to be produced and would necessarily be implied to have been allowed being part of the account books. He contends that a mere production of the account books bereft of the evidence of bills substantiating the entries so made would defeat the very object of leading such evidence as the account books maintained in the usual course of business per se is not a proof of liability. In case of necessary bills not being produced as a corroborative evidence to supplement and to crystallize the liability sought to be established by respondent-complainant, the object of allowing the additional opportunity shall itself stand defeated. In support of his contention that an entry in the bill accounts bereft of the corroborative material is per se not a proof of liability and is not satisfactory evidence to discharge the burden of proof, he places reliance on a Judgment of Hon'ble Supreme Court in the matter of ***'Central Bureau of Investigation versus V.C. Shukla' reported as 1998 (2) R.C.R. (Criminal) 17***.

8. I have heard learned counsel appearing on behalf of the parties and have gone through the entire record appended with the instant petitions with their able assistance.

9. It is not disputed that an application had been submitted by the respondent-complainant to produce the Accountant as well as the books of accounts. The said application was eventually allowed by the

High Court after permitting the respondent-complainant to produce one witness as well as the Account books. Needless to mention that at that stage, the High Court was not seized of the exact nature of the evidence sought to be examined. The use of the expression 'account books' was not qualified or restricted in its meaning, scope and application. The said judgment was rather in the nature of allowing an indulgence or concession to respondent-complainant to adduce his evidence and to establish existence of a liability. The construction of the said order cannot be done narrowly so as to restrict the object of granting of the opportunity. It is noticed that the necessity for leading the additional evidence arose on account of petitioner having been permitted to cross-examine the complainant, as on an earlier occasion, the cross-examination had been treated as nil. Thus, a situation arose where certain questions had been put to the complainant requiring the petitioner to lead sufficient evidence to establish the existence of pre-existing liability and a legally enforceable debt prior to issuance of the cheque. Needless to mention that the corroboration of the material i.e. the account books with the bills/invoices/vouchers is a material in support of the account book that has already been allowed and placed on record. The bills are part of the accounts required to prove the liability.

10. Besides, the object behind allowing an opportunity under Section 311 of the Cr.P.C. to lead additional evidence is to secure ends of justice and to grant opportunities to the respective parties to prove their case to the best of their ability. Thus, prejudice can be claimed to have been caused by the petitioner. He cannot, under the garb of technical interpretation and claiming a restrictive meaning be assigned to an order,

claim that the respondent-complainant ought not to be provided effective and complete opportunity to establish his case. I am of the view that if the respective interpretation is so accepted, it would rather be contrary to the object of the concession already granted by this Court vide order dated 06.08.2015.

11. Finding no infirmity, illegality and perversity in the order passed by the Judicial Magistrate First Class, Jalandhar dated 11.09.2015, the said order is affirmed and the evidence in the form of books of accounts Ex.CW2/199 to CW2/207 and bills Ex.CW2/4 to Ex.CW2/83 are allowed to be taken on record subject to just exceptions.

The petitions are accordingly dismissed.

**(VINOD S. BHARDWAJ)**
**JUDGE**

**MAY 17, 2022**
*Vishal Sharma*

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No`