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

CRM-M-46445-2019
Date of Decision: 16.05.2024

J.S. Industries Corporation .....Petitioner

Versus

Smt. Anita Goyal .....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

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

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HARKESH MANUJA, J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., challenge has been laid to an order dated 21.09.2019 passed by ld. Judicial Magistrate Ist Class, Dhuri, whereby an application moved at the instance of petitioner-accused for the purpose of summoning witnesses/evidence in defence, stands declined.

2. On account of dishonour of two cheques bearing No.759723 and 771487, the petitioner came to be summoned under Section 138 of the Negotiable Instruments Act, 1881 by learned Judicial Magistrate Ist Class, Dhuri. Upon conclusion of complainant evidence, statement of petitioner was recorded in terms of Section 313 Cr.P.C. and immediately thereafter, the petitioner moved an application seeking permission to summon certain witnesses including the Commissioner, Excise & Taxation Department, Dhuri for the purpose of proving the following VAT returns:-

"Commissioner, Excise & Taxation Department, Dhuri with the following records of Messer Paras Paper Enterprises,

Near Mansa Devi Mandir, Barnal Road, Dhuri, TIN No.0312 2068 512, Proprietor, Ms. Anita Goyal

1. VAT 23-Return of Sales to Parties for the quarters 01.04.2014 to 30.06.2014, 01.07.2014 to 30.09.2014, 01.10.2014 to 30.12.2014, 01.01.2015 to 31.03.2015, 01.04.2015 to 30.06.2015, 01.07.2015 to 30.09.2015, 01.10.2015 to 30.12.2015, 01.01.2016 to 31.03.2016

2. VAT 24-Return of Purchase of Material from Mills for quarter 01.04.2014 to 30.06.2014, 01.07.2014 to 30.09.2014, 01.10.2014 to 30.12.2014 and 01.01.2015 to 31.03.2015, 01.04.2015 to 30.06.2015, 01.07.2015 to 30.09.2015, 01.10.2015 to 30.12.2015, 01.01.2016 to 31.03.2016.

3. VAT 15-Consolidated Quarterly Return of Sale and Purchase for quarter 01.04.2014 to 30.06.2014, 01.07.2014 to 30.09.2014, 01.10.2014 to 30.12.2014 and 01.01.2015 to 31.03.2015, 01.04.2015 to 30.06.2015, 01.07.2015 to 30.09.2015, 01.10.2015 to 30.12.2015, 01.01.2016 to 31.03.2016."

The aforesaid application was opposed at the instance of respondent-complainant and the prayer came to be rejected by the trial Court vide order dated 21.09.2019, which has been impugned by way of present petition.

3. Vide impugned order, the prayer made by the petitioner for the summoning of witnesses from the Excise & Taxation Department, Dhuri in relation to the VAT returns of M/s Paras Paper Enterprises, Dhuri from 01.04.2014 to 31.03.2016 has been rejected merely on the ground that the same were already part of record having been produced by the complainant, whereas, there was no relevance of VAT 24 to the facts of the present case.

4. At the outset, learned counsel for the petitioner submits that at present, petitioner only presses for summoning of officer from the Excise &

Taxation Department, Dhuri in relation to the VAT returns and forgoes his prayer as regards the summoning of other witnesses.

5. No one has chosen to appear on behalf of the respondent.

6. I have heard learned counsel for the petitioner and gone through the paper book.

7. A perusal of record shows that a specific query was put to the complainant in her cross-examination who appeared as CW-1, wherein, it was pointed out that aforementioned VAT returns produced by the complainant being photostat copies and were taken on record as mark “CX”. Thus, once the photostat copies of the aforementioned VAT returns were not proved, the prayer made on behalf of the petitioner seeking permission to summon official witnesses from the concerned department so as to prove and rebut the VAT returns produced by the respondent-complainant, was wholly justified and thus, could not have been declined.

8. In the facts and circumstances, besides grant of opportunity of fair trial to the petitioner as well as to further the cause of justice, prayer made on his behalf needs to be allowed. Resultantly, the impugned order dated 21.09.2019 is set aside. The prayer made in the application qua the summoning of official witnesses from the concerned Excise & Taxation Department, Dhuri to prove all VAT returns is allowed.

9. All pending applications, if any, stand disposed of.

16.05.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

Whether speaking/reasoned: yes/no
Whether reportable? yes/no