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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010190152026

+ **W.P.(CRL) 1415/2026**

SHUBHAM SINGHAL

.....Petitioner

Through: **Mr. Charanjeet Singh Bhalla,**
Advocate.

versus

HIMANSHU KAUSHIK

.....Respondent

Through: **Mr. Abhishek Choudhary,**
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **20.08.2026**

CRL.M.A. 13582/2026 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(CRL) 1415/2026 & CRL.M.A. 13581/2026 (for stay)

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order of the Magistrate's Court, by which it dismissed an application under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] filed by the petitioner seeking re-examination of the complainant [respondent herein], in connection with proceedings instituted by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ["NI Act"]. He also assails an order of the Sessions Court dated 24.02.2026, by which his revision petition



against the aforesaid order was dismissed.

2. I have heard Mr. Charanjeet Singh Bhalla, learned counsel for the petitioner, and Mr. Abhishek Choudhary, learned counsel for the respondent.

3. The complaint was instituted by the respondent against the petitioner in August 2018, alleging dishonour of a cheque for the sum of Rs. 9,00,000/-.

4. In the course of proceedings therein, the respondent was examined before the Magistrate's Court as CW-1. His examination-in-chief was conducted on 15.02.2022, and his cross-examination was conducted on 28.05.2022. The evidence of two more witnesses on behalf of the respondent was thereafter recorded. The statement of the accused was recorded on 02.05.2024 under Section 313 of the Code of Criminal Procedure, 1973 ["CrPC"], and the matter was fixed for defence evidence.

5. At that stage, the petitioner filed an application under Section 348 BNSS [corresponding to Section 311 of CrPC] for recalling the respondent [CW-1], for further cross-examination. A copy of the application has been placed on record [Annexure P-4 to the petition], wherein the factual context is narrated as follows:

"1. That the above captioned case is pending adjudication before this Hon'ble Court is fixed for today, i.e. [illegible].2025.

*2. **That CW-1 is the complainant and if he is not subjected for further cross-examination by the defence, serious prejudice will be caused to the defence of applicant/accused,** hence to meet the just decision of the case recalling of CW-1 for further cross-examination by the defence is absolutely necessary.*

3. That the examination-in-chief of PW-1 was recorded on 31.08.2018. The cross-examination was conducted on 28.05.2022.

*4. **That even though CW-1 was cross examined by the defence, but***



on material aspects of the case if his evidence remains unchallenged it results serious prejudice to the defence of applicant/accused and therefore for meeting the just decision of the case, the recall of CW-1 further cross-examination to a limited extent by the defence is absolutely necessary. No harm will cause to the prosecution if this witness is recalled.”¹

The other contents of the application consist of submissions as to the interpretation of Section 311 CrPC, and an extract from the judgment of the Supreme Court in *V.N. Patil v. K. Niranjan Kumar*². It was also contended therein that failure to recall CW-1 would lead to great prejudice and irreparable loss to applicant/accused and is therefore essential for “just decision of the case”.

6. The Magistrate’s Court dismissed the petitioner’s application for recall of CW-1 *vide* order dated 02.07.2025, and costs of Rs. 2,000/- was imposed upon the petitioner. The Court noted that several opportunities had been given to the petitioner to cross-examine the respondent, whose cross-examination finally took place on 28.05.2022. The application was filed more than three years thereafter, without any explanation for the delay. The Court therefore found no ground to recall the witness, noting that the power under Section 311 CrPC is to be exercised with care, caution and circumspection.

7. When the matter was carried in revision, the Sessions Court upheld the aforesaid order. It held that the revision petition was not maintainable, as the impugned order was interlocutory, but also affirmed the decision on merits. The Sessions Court noted the argument on behalf of the petitioner that the erstwhile counsel had conducted a deficient cross-

¹ Emphasis supplied.

² (2021) 3 SCC 661.



examination of the complainant, without material questions being put to the complainant. However, it held that change of counsel does not afford a ground for recall of witness.

8. Before this Court also, Mr. Bhalla submits that, an application for recall of a witness was necessitated in the ends of justice, as the erstwhile counsel of the petitioner had not conducted a proper and comprehensive cross-examination of the complainant on material aspects, particularly regarding execution of a promissory note, relied upon by the respondent.

9. Mr. Choudhary, who is present on advance notice, has also handed up the cross-examination of the complainant conducted on 28.05.2022, which is taken on record. It is his contention that questions with regard to promissory note were, in fact, put to CW1.

10. Having heard learned counsel for the parties, and considering the material on record, I am of the view that the Magistrate's Court and the Sessions Court have correctly held that the ground raised is insufficient to require recall of the witness at the stage, at which the application was made.

11. Section 348 of the BNSS reads as follows:

“348. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

12. Section 311 of CrPC, which is the corresponding provision to Section 348 BNSS, has been interpreted in several judgments of the Supreme Court, where it has been clarified that, while the power vested in



the Court is wide, it must be exercised with due care and caution, and the Court has to ensure that it is not used as dilatory tool in the hands of the accused. This position was reiterated in *Swapan Kumar Chatterjee v. CBI*³, wherein the Supreme Court observed as follows:

*“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. **The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection.** The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”⁴*

13. It has also been specifically held by the Supreme Court in *State (NCT of Delhi) v. Shiv Kumar Yadav*⁵, that change of counsel does not constitute a ground for recall of a witness after a full opportunity of cross-examination has already been provided. The Supreme Court observed as follows:

*“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. **While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system.** The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of*

³ (2019) 14 SCC 328

⁴ Emphasis supplied.

⁵ (2016) 2 SCC 402



heinous crimes, if they are required to repeatedly appear in court to face cross-examination.”⁶

A co-ordinate Bench of this Court has also reiterated the same position in *Vimal Ghai v. M.P. Sharma*⁷, observing as follows:

“16. The newly engaged counsel steps into the shoes of previous counsel and cannot agitate that more questions were required to be put to the witnesses. Merely because the new counsel has been engaged, same would not confer any right to the petitioner to seek recall of complainant/respondent for cross-examination, failing which, there would be chaos and every new counsel engaged by the concerned party would file an application for recall of witnesses on that ground which would result in unnecessary delay in disposal of the case. This Court in CRL.M.C 6451/2025, titled, “Govind Mandalv. State of NCT of Delhi” held that power under Section 311 Cr. P.C. cannot be exercised merely on account of the reason of change in counsel. The relevant paragraph of said order reads as under:—

“15 Moreover, the power under Section 311 of the CrPC cannot be exercised at such a belated stage merely on account of change in counsel. Different opinion of a subsequent counsel on how the case is to be prosecuted cannot be a legal ground for recalling a witness. If such arguments are allowed, the trial would be a never-ending endeavour since after every few months, a new lawyer with a different strategy would be engaged, who would like to cross examine the witnesses again.”⁸

14. In the present case, it is not contended that the petitioner/accused was not given an opportunity to cross-examine the witness; the application filed before the Magistrate’s Court itself records that the witness was cross-examined by the defence. The ground for recall is only that material aspects of the evidence remained unchallenged in the cross-examination, leading to prejudice to the accused.

15. Even this application was not made proximate to the cross-

⁶ Emphasis supplied.

⁷ 2026 SCC OnLine Del 14.



examination, but three years thereafter, after the evidence of two other witnesses have also been recorded, complainant's evidence has been closed, and the statement of the accused had also been taken on record.

16. As noted above, the ground urged before this Court is that the erstwhile counsel had conducted a deficient cross-examination, particularly with regard to certain material aspects. I am, however, of the view that this ground is wholly insufficient to warrant recall of witnesses, particularly after passage of three years and significant progress in the trial. Permitting such a course solely on account of a change of counsel and dissatisfaction with the manner in which the case was earlier conducted, would open the door for litigants to unduly delay the conclusion of proceedings by engaging new counsel.

17. For the aforesaid reasons, I do not find any ground to entertain the present petition, which is dismissed with costs of Rs. 10,000/- to the respondent.

18. The petition stands disposed of in terms of the above.

PRATEEK JALAN, J

AUGUST 20, 2026

'pv'/SM/

⁸ Emphasis supplied.