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

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+ CRL.M.C. 4788/2026 and CRL.M.A. 20072/2026, CRL.M.A. 20073/2026

NEERAJ KUMARI @ NIRAJ KUMARI

.....Petitioner

Through: Mr. Vaseem Khan, Advocate. (Thr. VC)

versus

RAJ CHAUDHARY

.....Respondent

Through: Mr. Charanjeet Singh, Advocate (Thr. VC)

37

+ CRL.M.C. 4635/2026 and CRL.M.A. 19309/2026

NEERAJ KUMARI @ NIRAJ KUMARI

.....Petitioner

Through: Mr. Vaseem Khan, Advocate. (Thr. VC)

versus

RAJ CHAUDHARY

.....Respondent

Through: Mr. Charanjeet Singh, Advocate (Thr. VC)

38

+ CRL.M.C. 4636/2026 and CRL.M.A. 19311/2026

NEERAJ KUMARI @ NIRAJ KUMARI



.....Petitioner
Through: Mr. Vaseem Khan, Advocate. (Thr.
VC)

versus

RAJ CHAUDHARY

.....Respondent
Through: Mr. Charanjeet Singh, Advocate (Thr.
VC)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **16.07.2026**

1. All three petitions arise out of the connected complaints filed by the respondent against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('the Act'), pending since the year 2021 before the Court of JMFC, Tis Hazari Courts, Delhi, being CC No. 4024/2021, CC No. 4076/2021 and a third connected complaint between the same parties.
2. The three complaints have proceeded on a common trajectory before the same Trial Court, have been listed together, and give rise to identical questions of fact and law. It would, therefore, be in the interest of justice, and to avoid the possibility of conflicting findings on an identical set of facts, that all three petitions be disposed of by this common judgment.
3. In each of the three matters, the petitioner impugns two orders passed by the Trial Court: (i) the order dated 17.07.2025, whereby the right of the petitioner/accused to cross-examine the complainant (CW-1) was foreclosed; and (ii) the order dated 09.03.2026, whereby the application moved by the petitioner/accused under Section 311 Cr.P.C. for recall of the



complainant for the purpose of cross-examination came to be dismissed.

4. The respondent instituted the complaints in the year 2021, alleging dishonour of cheques issued by the petitioner in connection with monies advanced to her. Summons were issued, notice under Section 251 Cr.P.C. was framed, and the matters were fixed for the respondent's evidence.

5. The record before the Trial Court discloses that the matter was originally fixed for cross-examination of the complainant as far back as 15.07.2023, and that adjournments were, thereafter, sought on behalf of the petitioner/accused on 19.12.2023, 07.03.2024, 21.03.2024 and 26.04.2025. On 16.05.2024, none had appeared on behalf of the petitioner/accused, resulting in issuance of non-bailable warrants to secure her presence. On 22.05.2025, once again none had appeared on behalf of the accused on the second call, and the Trial Court granted what was expressly recorded as the 'last opportunity' to cross-examine CW-1, subject to payment of cost of Rs. 2,000/- to the complainant.

6. On 17.07.2025, the matter was taken up for the complainant's evidence through video conferencing. The order-sheet of that date records that on the first call, at around 12:40 p.m., a pass-over was sought by the proxy counsel appearing for the petitioner/accused, on the ground that the main counsel was before the Family Court, Rohini. The pass-over was granted, and the matter was directed to be taken up at 2:00 p.m. At the 2:00 p.m. call, and again at the subsequent call at 2:18 p.m., the order-sheet records, in terms, that 'none' appeared on behalf of the accused.

7. It was further placed on record by counsel for the complainant that the matter had been pending for complainant's evidence since 03.04.2024; that costs of approximately Rs. 37,000/- in respect of three connected matters,



and travelling allowance of Rs. 3,165/-, remained unpaid by the accused; that the notice framed under Section 251 Cr.P.C. on 13.03.2023 had not been signed by the accused; and that bail bonds had not been furnished by the accused till that date.

8. Recording that ample opportunities already stood granted, including the specific opportunities noted on 21.03.2024, 26.04.2025 and 22.05.2025, the last of which was granted subject to cost, the Trial Court closed the right of the accused to cross-examine the complainant, and directed the matter to be put up for recording of the statement of the accused under Section 313 Cr.P.C. on 02.09.2025.

9. By the impugned order dated 09.03.2026, the Trial Court dismissed the applications under Section 311 Cr.P.C. The reasoning of the Ld. Trial Court, recorded at paragraph 8 of the impugned orders, reads as under:

“8. It is pertinent to mention that present matter was fixed for CE on 15.07.2023. Adjournments have been sought on behalf of the accused on 19.12.2023, 07.03.2024, 21.03.2024 and 26.04.2025. On 16.05.2024, none appeared on behalf of accused and NBWs were issued against the accused to secure her presence. Further, on 22.05.2025, none has appeared on behalf of accused on the second call and last opportunity was granted to accused to cross examine CW1. It is, therefore, evident that ample opportunities have already been granted to the accused to cross examine the complainant witness.”

10. The Trial Court further recorded, at paragraphs 10 to 13 of the impugned order dated 09.03.2026, that no order of the Family Court, Rohini, or of any other court, was produced to substantiate the claim that the main counsel for the accused was engaged elsewhere on the forenoon of 17.07.2025; that the Electronic Evidence and Video Conferencing Rules, 2025 do not contemplate marking of appearance through a chat-box; and



that the application under Section 311 Cr.P.C. did not even disclose the aspects on which the complainant was sought to be cross-examined. On this reasoning, the Trial Court declined to grant any further opportunity and dismissed the applications, while clarifying that nothing therein would be construed as an opinion on the merits of the case.

11. Learned counsel for the petitioner/accused submits that the petitioner is a housewife, ordinarily residing outside Delhi, who was, during the relevant period, medically unwell and unable to travel frequently to Delhi. It is submitted that despite the said difficulties, the petitioner has paid costs in excess of Rs. 40,165/- to the complainant on various occasions, demonstrating her bona fides and continued participation in the proceedings.

12. It is further submitted that on 17.07.2025, genuine efforts were made by counsel to appear through video conferencing, but on account of circumstances beyond the control of counsel, including malfunctioning of the audio-video link and a change in the physical courtroom of which counsel was not informed, he was unable to apprise the Trial Court of the prevailing difficulty in time. It is submitted that the right to cross-examine a witness is a valuable right of the accused, the denial of which causes serious and irreversible prejudice, and that grant of one further opportunity, even if the last, would sub-serve the ends of justice without causing any real prejudice to the complainant, particularly since the petitioner is willing to bear the cost of any further delay.

13. *Per contra*, learned counsel for the respondent/complainant submits that the complaints have been pending since 2021, and that the record itself demonstrates a consistent pattern of default on the part of the petitioner, non-appearance resulting in issuance of non-bailable warrants, non-



furnishing of bail bonds, non-signing of the notice under Section 251 Cr.P.C. for over three years, and non-payment of costs imposed on more than one occasion.

14. It is submitted that as many as twelve opportunities are stated to have been availed of by the accused to cross-examine the complainant, that 22.05.2025 was expressly recorded as the 'last opportunity' subject to cost, and that the accused cannot be permitted to indefinitely postpone the trial of complaints that are over five years old, particularly when the complainant, a serving Army officer, is required to travel from his place of posting to attend the proceedings. It is submitted that any further indulgence would be contrary to the legislative mandate of expeditious trial embedded in Section 143 of the Act.

15. Two questions arise for consideration: **first**, whether the Trial Court committed any jurisdictional error or perversity in foreclosing the right of the petitioner to cross-examine the complainant on 17.07.2025, and in thereafter declining to exercise the power of recall under Section 311 Cr.P.C. *vide* the order dated 09.03.2026; and **second**, independent of the above, whether the facts and circumstances, taken cumulatively across the three connected matters, warrant the exercise of this Court's inherent jurisdiction under Section 528 BNSS to mould relief in the interest of justice, notwithstanding the absence of any infirmity strictly so called in the impugned orders.

16. Section 311 Cr.P.C. (corresponding to Section 348 of the BNSS) confers upon a criminal court the power, at any stage of an inquiry, trial or other proceeding, to summon any person as a witness, or to recall and re-examine any person already examined, if such evidence appears to it to be



essential to the just decision of the case. The provision, though couched in the widest possible terms, is not one of unfettered discretion; it is anchored to the touchstone of essentiality.

17. The Supreme Court, in **Natasha Singh v. CBI (State)**¹, while explaining the scope of the power, observed that Section 311 Cr.P.C. confers a very wide discretionary power upon the court, but that such discretion “is to be exercised judiciously and not arbitrarily”, and that the determinative factor is whether the evidence of the witness sought to be recalled is, in fact, essential to the just decision of the case. Supreme Court also cautioned that the power must be invoked “only in order to meet the ends of justice, for strong and valid reasons”, and that an application under Section 311 Cr.P.C. must not be allowed merely to fill up a lacuna in the case of either party or to cause serious prejudice to the opposite side.

18. Similarly, in **Rajaram Prasad Yadav v. State of Bihar**², the Supreme Court culled out guiding principles for exercise of the power under Section 311 Cr.P.C., holding, *inter alia*, that the exercise of such power cannot be dubbed as filling in a lacuna in a party’s case, “unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice” to the other side. The Court further held that fair trial entails the interests of the accused, the victim, and society alike, and that grant of fair and proper opportunity is both a constitutional and a human right.

19. These principles make it evident that the power under Section 311 Cr.P.C. cannot be exercised as a matter of course, and a court declining to

¹ (2013) 5 SCC 741.

² (2013) 14 SCC 461.



recall a witness after several defaults cannot, without more, be said to have erred in law. On a plain reading of the impugned order dated 09.03.2026, this Court finds that the Trial Court has applied its mind to the relevant considerations, the history of adjournments, the specific recording of a ‘last opportunity’ on 22.05.2025 subject to costs. To this extent, no jurisdictional infirmity, perversity, or failure to consider relevant material is demonstrated in the impugned orders, such as would ordinarily warrant interference in exercise of jurisdiction under Section 528 BNSS.

20. The right to cross-examine a witness, particularly a witness on whose testimony the entire edifice of the prosecution/complainant’s case rests, is not a mere procedural formality but a substantive facet of the right to a fair trial guaranteed under Article 21 of the Constitution. In ***Zahira Habibulla H. Sheikh v. State of Gujarat***³, the Supreme Court held that a fair trial obliges the court to see that both the prosecution and the defence are given a full and fair opportunity to lead evidence and to test the evidence led against them, and that denial of such opportunity strikes at the root of a fair trial.

21. The Supreme Court, in ***Natasha Singh*** (supra), while examining this very facet, observed that “*adducing evidence in support of the defence is a valuable right*” and that “*denial of such right would amount to the denial of a fair trial*”. The width of the power under Section 311 Cr.P.C. and the necessity of fair trial thus operate as two sides of the same coin, the former is the means by which the latter is secured, where genuinely warranted.

22. It also bears emphasis that where an accused has, on the record, engaged counsel, paid fees, and otherwise participated in the proceedings, a default occasioned by the conduct of counsel, as distinct from the deliberate



or contumacious conduct of the party, stands on a different footing. The Supreme Court, in **Rafiq v. Munshilal**,⁴ held that a party who has done everything expected of him, including engaging and briefing an advocate, cannot be made to suffer for the “inaction, deliberate omission, or misdemeanour” of the advocate, and that it is no part of a litigant’s duty to act as a watchdog over his own counsel’s appearance in court.

23. While the present matters are not on all fours with **Rafiq** (supra), inasmuch as the record before the Trial Court also discloses independent defaults attributable to the petitioner herself, such as non-furnishing of bail bonds and non-payment of costs, the episode of 17.07.2025, where counsel is recorded to have entered appearance through video conferencing barely minutes after closure of the right to cross-examine, cannot be entirely divorced from consideration.

24. Equally, this Court cannot be oblivious to the special legislative scheme governing trials under Section 138 of the Act. Section 143(3) of the Act mandates that every trial shall be conducted as expeditiously as possible, with an endeavour to conclude the trial within six months of the filing of the complaint. The Supreme Court, in the Constitution Bench judgment in **In Re: Expeditious Trial of Cases under Section 138 of the N.I. Act, 1881**⁵, took note of the more than 35 lakh cheque-dishonour cases pending across the country and issued a series of directions to secure expeditious disposal of such complaints, reiterating the object underlying the

³ (2004) 4 SCC 158.

⁴ (1981) 2 SCC 788.

⁵ 2021 SCC OnLine SC 325.



earlier decision in ***Indian Bank Association v. Union of India***⁶ where directions were issued for expeditious trial of complaints under the Act.

25. On a conspectus of the above, this Court is of the view that while the impugned orders, tested purely on the anvil of Section 311 Cr.P.C. and the principles laid down in ***Natasha Singh*** (supra) and ***Rajaram Prasad Yadav*** (supra), do not disclose any error warranting interference, the peculiar facts of the present case warrant a calibrated exercise of this Court's inherent jurisdiction under Section 528 BNSS, distinct from and independent of any interference with the correctness of the impugned orders.

26. At the same time, having regard to the litigation history set out above and the legislative mandate of expeditious trial under Section 143 of the Act, this Court is not inclined to grant an unconditional opportunity, nor to disturb the findings recorded by the Trial Court. The opportunity being granted is accordingly made the very last opportunity, hedged with stringent conditions as to costs, expedition, and consequences of default, so that the legitimate interest of the complainant in early conclusion of a five-year-old trial is not further compromised.

27. In view of the foregoing, while this Court does not find any reason to interfere with the findings recorded by the Ld. Trial Court in the impugned orders dated 17.07.2025 and 09.03.2026, in the interest of justice, and subject to the conditions set out below, one final opportunity is granted to the petitioner/accused to cross-examine the complainant in all three connected complaints. The three petitions, along with the connected applications, are accordingly disposed of with the following directions:

(i). The Ld. Trial Court shall fix the date(s) for cross-examination

⁶ (2014) 5 SCC 590.



of the complainant as per his convenience, having regard to the fact that he is posted outside Delhi;

(ii). As a condition precedent, the petitioner/accused shall, on or before the date so fixed, pay to the complainant a cost of Rs. 20,000/- (Rupees Twenty Thousand only), in addition to Rs. 10,000/- (Rupees Ten Thousand only) towards travel expenses;

(iii). On the date so fixed, the petitioner/accused shall proceed to cross-examine the complainant, and in the event the cross-examination remains incomplete on that date for any reason, the same shall be concluded, in its entirety, on the next date to be fixed by the Ld. Trial Court, without any further extension;

(iv). No adjournment shall be sought by or on behalf of the petitioner/accused for the purpose of cross-examination, and any default in this regard shall entail forfeiture of the opportunity granted hereby, without further reference to this Court;

(v). Even after completion of the cross-examination, the petitioner/accused shall appear through counsel or personally on all subsequent dates and shall render full and unqualified cooperation for early conclusion of the trial;

(vi). The Trial Court shall endeavour to take the three connected complaints to their logical conclusion without any undue delay, and in any event within six (6) months from the date of completion of the cross-examination of the complainant.



28. It is clarified that nothing contained in this judgment shall be construed as an expression of opinion on the merits of the respective complaints, or on the merits of the defence sought to be set up by the petitioner, both of which shall be independently examined by the Trial Court on their own merits, uninfluenced by any observation made herein.

29. The petitions, along with all connected applications, stand disposed of in the above terms.

30. *Dasti*

PURUSHAINDR KUMAR KAURAV, J

JULY 16, 2026

Aks/nk