



complainant for further cross-examination, has been dismissed.

3. Brief facts, necessary for proper adjudication of the present case, are that the respondent Bank/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, with the allegations that the petitioner, in discharge of her legal liability, issued a cheque dated 19.12.2019, amounting to Rs.55,70,000/- in favour of the respondent Bank, which was dishonoured with remarks of '*Insufficient Funds*'. The respondent filed a complaint dated 27.02.2020 (Annexure P-1) under Section 138 of Negotiable Instruments Act. During evidence of the respondent Bank, examination-in-chief as well as cross-examination of the concerned official of respondent Bank was recorded. However, the petitioner later took a stand that there were some questions which were left during the course of cross-examination to be put to the witness and therefore, moved application dated 03.04.2024 under Section 311 Cr.P.C. (Annexure P-2) for recalling the aforesaid witness of respondent Bank. The said application was dismissed vide impugned order dated 02.08.2024 (Annexure P-4). So, the petitioner has approached this Court by way of instant petition, praying for quashing the said order dated 02.08.2024.

4. Learned counsel for the petitioner has argued that the questions, which were left to be put to the witness, were very essential for proper adjudication of the lis in hand and only for this purpose, application in question was moved but the learned Trial Court did not consider the same and illegally passed the impugned order. Reliance in this regard has been placed on a judgment of Hon'ble Supreme Court in case of Varsha Garg vs.

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5. I have heard the submissions of learned counsel for the petitioner and have carefully gone through the case file.

6. It is apparent from a bare perusal of the impugned order that the application under Section 311 Cr.P.C. was dismissed at the stage, when the case was at defence evidence. Earlier, the witness was cross-examined by the petitioner twice i.e. on 18.05.2023 and 03.11.2023. After passing of five months, the petitioner could not be allowed to move application to recall the witness when the case was at defence evidence. No person can be allowed to take the Courts for granted or to fill up lacuna in the case by moving application on one pretext or the other. Allowing the application of one side would certainly prejudice the other side. The learned Trial Court has already granted sufficient opportunity to the petitioner for cross-examining the witness of the respondent Bank. The Court has to maintain balance of both the sides. If a trial is expected to be fair to the accused, it should be fair to the prosecution as well. As far as the case law cited by learned counsel for the petitioner is concerned, the same is applicable if the Court finds it 'essential' to recall the witness and not otherwise.

7. In view of the above, this Court is of the view that the impugned order dated 02.08.2024 (Annexure P-4), passed by the learned Trial Court, vide which the application filed by the petitioner under Section 311 Cr.P.C. has been dismissed, does not suffer from any illegality, perversity or infirmity. The said order is a well-reasoned speaking order and does not warrant interference by this Court.

8. Accordingly, the present petition is without any merit and the same is hereby dismissed in limine.
9. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present petition.
10. Pending applications, if any, shall stand disposed of along with this judgment.

September 16, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.