



CRM-M-12354-2025

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

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CRM-M-12354-2025

Date of decision: 04.09.2025

Ravinder Kumar

...Petitioner

V/s

Jitin Neol

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Priyanshu Kamra, Advocate for the petitioner.

Mr. Piyush Setia, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C., 1973 seeking quashing of the order dated 24.02.2025 passed by learned Judicial Magistrate Ist Class, Abohar whereby the application filed by the petitioner (herein), under Section 311 of Cr.P.C. of 1973, for recalling of the complainant i.e. CW-1 Jitin Neol (respondent herein) for the purpose of further cross-examination has been dismissed.

2. Learned counsel for the petitioner has iterated that the impugned order is contrary to both law and the material available on record. The application of the petitioner for recalling the complainant (respondent herein) for effective cross-examination has erroneously been dismissed by the Court below, which has caused serious prejudice to the petitioner. Leaned counsel for the petitioner has further submitted that the impugned order is liable to be set-aside as the Court below has failed to appreciate the settled principles of law that certain aspects can only be elicited in cross-examination of the complainant. According to him, the petitioner-accused



has categorically demonstrated that during the course of cross-examination on 30.08.2023 and 04.09.2023, the complainant has himself admitted that specific cash entries in his account could be subjected to verification at the instance of the accused and this fact stood corroborated through the testimonies of CW-3 and DW-6. According to learned counsel, despite such material coming on record, the Court below has erroneously concluded that the defence counsel has failed to explain why the complainant was not cross-examined on the aforesaid points and dismissed the application. Furthermore, the reason assigned by the Court below is perverse and contrary to the settled principles of natural justice as the opportunity to cross-examination is a valuable right enshrined under law. It is further contended by learned counsel that the impugned order is cryptic and devoid of merit and thus, deserves to be set-aside and prays for recall of the complainant to conduct proper and effective cross-examination in the interest of justice. On the strength of aforesaid submissions, the grant of petition in hand is entreated for.

3. *Per contra*, learned counsel appearing for the respondent has opposed the instant petition by arguing that the impugned order does not suffer from any illegality. Learned counsel has iterated that the accused-petitioner had full opportunity to cross-examine the complainant-respondent on 30.08.2023 and 04.09.2023 respectively but deliberately chose not to do so. According to learned counsel, the instant application is nothing but an attempt to fill up lacunae in the defense and to protract the proceedings. Furthermore, the recall of the complainant-respondent after completion of defence evidence would cause unnecessary harassment and delay which is



contrary to the legislative intent of expeditious trial under the Negotiable Instruments Act, 1881. Learned counsel has further submitted that the power under Section 311 Cr.P.C. is to be exercised judiciously, sparingly and only to prevent failure of justice not to afford repeated opportunities to a negligent party. Lastly, learned counsel has prayed that the Court below has rightly dismissed the application in hand for recalling the complainant by a well-reasoned order and hence the dismissal of the instant petition is entreated for.

4. I have heard learned counsel for the rival parties and perused the paper-book.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.

(v) A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.



(vi) Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.

(II) No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guide-lines as every case is sui generis in terms of factual conspectus.

(III) Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”

6. Shorn of unnecessary details, the relevant factual matrix of the case in hand is that the complainant-respondent has instituted a complaint against the petitioner-accused (herein) under Section 138 of the Negotiable Instruments Act, 1881, allegedly, on account of dishonor of cheque of Rs.15,00,000/-. During the course of trial, the complainant was cross-examined on more than 10 occasions and finally on 08.01.2024 the complainant closed his evidence. After that, the statement under Section 313 Cr.P.C. of the accused-petitioner was recorded and the case was fixed for 06.03.2024 for the defence evidence of the accused. Thereafter, the accused-petitioner examined 08 witnesses and finally when the list of witnesses was exhausted on 17.02.2025, the accused-petitioner moved the application under Section 311 of the Code seeking recalling of the complainant, who was examined over 02 years back, on the ground that certain material aspects the complainant was not cross-examined properly and an opportunity be granted for conducting meaningful and effective cross-examination of the complainant. Upon issuance of notice, the complainant-



respondent resisted the application by contending that the application is frivolous in nature and has been filed just to fill up the lacuna.

7. The short question which arises for rumination before this Court is whether, in the factual *milieu* of the case in hand, it is necessary, in the interest of justice, to recall the complainant-respondent for further cross-examination under Section 311 Cr.P.C.

8. It is not in dispute that the complainant has already been cross-examined extensively on 30.08.2023 and 04.09.2023 respectively. In the considered opinion of this Court, the petitioner has adequate opportunity at that stage to put all relevant questions, including those pertaining to the alleged cash entries. No explanation is coming forward on behalf of the accused-petitioner as to why such questions were not asked during the earlier cross-examination of the complainant, despite the defense being fully aware of the nature of the dispute. The contention raised on behalf of learned counsel for the petitioner that the facts has emerged only through the testimony of DW-3 and DW-6, does not impress this Court. In the considered opinion of this Court, the defence cannot be permitted to use its own witnesses as a ground to reopen the cross-examination of the complainant-respondent. The discretionary power under Section 311 Cr.P.C. is not to be exercised to fill up the lacunae in the defence case. Furthermore, in the considered opinion of this Court, the recall of witness cannot be sought as a matter of right once an effective opportunity has been granted and that the power under Section 311 Cr.P.C. must be exercised with circumspection to prevent injustice, not to prolong the trial. The complainant-respondent has already undergone sufficient cross-examination



and recalling him again would not only cause undue harassment but also result in unwarranted delay in disposal of the case in hand under the Negotiable Instruments Act.

9. In the factual matrix of the case in hand, this Court is satisfied that the application moved by the accused-petitioner is bereft of *bona fide* and afterthought intended to delay the proceedings. In the considered opinion of this Court, the accused-petitioner has not been able to demonstrate that further cross-examination of the complainant-respondent is essential for a just decision of the case. The instant application has been filed at a belated stage, seeking recalling of the complainant who was examined more than 1½ years ago and during the said time the complainant was cross-examined on more than 10 occasions. Although, the power under Section 311 Cr.P.C. is indeed wide and discretionary but such power must be exercised judiciously and not in a routine manner, especially in the absence of any cogent justification.

10. For the foregoing reasons, this Court does not find any error in the impugned order passed by the Court below. In the considered opinion of this Court, the trial Court has appropriately dealt with the application in question by dismissing the same.

11. In view of the above ratiocination, it is directed as follows:

(i) The impugned order dated 24.02.2025 passed by the Judicial Magistrate Ist Class, Abohar, does not call for any interference and deserves dismissal.

Ordered accordingly.



- (ii) Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Court below shall proceed further, in accordance with law, without being influenced therefrom.
- (ii) Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 04, 2025
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No