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

CRM-M-15089-2025

Date of Decision: 12.08.2025

NEHA NAGPAL

..... Petitioner

*Versus***DAVINDER KUMAR**

..... Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Prince Pasricha, Advocate
for the petitioner.

YASHVIR SINGH RATHOR, J. (Oral)

1. Present petition has been filed for setting aside of order dated 31.01.2025 (Annexure P-3) passed by learned JMIC, Abohar, whereby cross-examination of CW-1 Davinder Kumar, has been treated as NIL and order dated 10.02.2025 passed by Ld. JMIC, Abohar vide which the application under Section 311 of Cr.P.C. praying for recalling of witness for cross-examination has been dismissed.

2. Learned counsel for the petitioner has argued that the petitioner filed the petition under Section 311 of Cr.P.C. praying for recalling of order dated 31.01.2025 but the same was declined by learned Trial Court. It is submitted that the petitioner is the accused in the complaint and without cross-examination of the complainant, he would suffer an irreparable loss and injuries. He submits that there was no deliberate intention on the part of the petitioner is not cross-examining the complainant. He submits that the learned trial Court has erred in declining the same vide impugned order and the same deserves to be set aside.



3. Heard.

4. A perusal of the file show that a compliant under Section 138 of Negotiable Instrument Act was filed by respondent against the petitioner wherein complainant appeared as CW-1 but his cross-examination was ordered to be treated as NIL due to non-appearance of the petitioner or her counsel. Thereafter, the petitioner moved an application under Section 311 of Cr.P.C. for recalling of said witness which was declined by the learned trial Court vide order dated 10.02.2025 wherein, it was observed that CW-1, namely, Davinder Kumar was partly cross-examined and his further cross-examination was deferred on the request of learned counsel for the petitioner and ultimately when the counsel for the petitioner failed to appear and cross-examine the complainant, his cross-examination was ordered to be treated as NIL. However, the Court cannot ignore the fact that the petitioner is being prosecuted in a complaint under Section 138 of Negotiable Instruments Act and the cross-examination of the complainant is essential for just decision of the case and in case, the cross-examination of complainant is not allowed to be conducted by the petitioner, he will suffer and irreparable loss and will not be able to set up his defence to the charge/notice.

5. Resultantly, the present petition is disposed of and orders dated 31.01.2025 and 10.02.2025, are hereby set aside. Learned trial Court is directed to afford one effective opportunity for cross-examination of the complainant, subject to subject to payment of cost of Rs.5000/- to be paid to the complainant, on his appearance before the trial Court. It is made clear that no further opportunity will be granted to the

petitioner for the purpose of cross-examination of CW-1, namely, Davinder Kumar and the cost will be paid to the complainant by the petitioner before start of cross-examination of CW-1.

(YASHVIR SINGH RATHOR)
JUDGE

12.08.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No