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

**CRM-M-15632-2025
Date of Decision: 27.03.2025**

M/S MAHADEV TEXTILES THROUGH ITS PARTNER AND ANR

.....PETITIONER

VERSUS

ANUJ MAINI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Sharma, Advocate
for the petitioners.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 528 BNSS, 2023 for quashing of order dated 07.03.2025 passed by learned Trial Court in case no.COMA/8104/2021 dated 02.04.2021 under section 138 of Negotiable Instruments Act 1881 vide Annexure P-5(Impugned Order) whereby the Application u/s 348 BNSS for permission to cross examine again the respondent/complainant has been dismissed.

2. Counsel for the petitioner contends that the respondent/complainant was examined by the counsel for the petitioner although the cross examination was not sufficient enough to prove the falsehood of the respondent/complainant as the counsel for the petitioner Mr.n Gautam Rishi had moved to Canada and all this while left minute details of the case of the petitioner , which were not put to respondent/complainant.



3. He further contends that the petitioner's earlier counsel had filed application for recalling of order dated 09.11.2023 and the said application was dismissed vide order dated 09.01.2025.(Annexure P-8). However, it is further argued that the purpose of the impugned order dated 07.03.2025 and order dated 09.01.2025 were totally different as in the latter one, recalling of order was sought instead of making clear and direct prayer for recalling of complainant for cross-examination.

4. Heard learned counsel for the petitioner at length.

5. The present revision pertains to grievance of the petitioner against the impugned order dated 07.03.2025 passed by the trial court dismissing the application under section 348 BNSS, 2023 wherein the petitioner has not been granted permission to cross examine again the respondent/complainant to prove his falsehood comprehensively.

6. Before delving into the merits of the case, it would be apposite to discuss section 348 BNSS,2023 which is reproduced herein below:-

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.

7. Perusal of the above mentioned section makes it amply clear that this section only allows recalling and re-examination of a witness already



examined wherein the court thinks it fit to be essential for just decision of the case.

8. Further, the Apex Court in **“Vijay Kumar vs State of U.P. & Anr, 2011 (8) SCC 136”** has held that :-

“Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the code and the principles of criminal law. The discretionary power conferred under section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”

9. An application under section 348 BNSS, 2023/311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party . What is required to be seen is the essentiality of the evidence sought to be brought on record. In the instant case, the petitioner has averred that the Respondent/complainant has misused the three cheques which were given as a security and to prove his innocence, he had filed an application under section 348 BNSS for re-examination of the respondent/complainant for the reason that his newly engaged lawyer was dissatisfied with the cross examination of the respondent/complainant and it is only for this reason the instant revision has been filed in this court.

10. The court after perusing the record in hand is of the clear view that once the case was fixed for evidence wherein the petitioner was given ample opportunity to examine the respondent/complainant added with the fact that the



examination which the petitioner intended to conduct was well within the knowledge of the earlier counsel for the petitioner therefore , by no stretch of imagination the court can now allow the re-examination of the respondent/complainant only for the reason that the new counsel for the petitioner is dissatisfied with the earlier examination of the respondent/complainant. Also, the Apex Court in the case titled as “**A.G. Vs Shiv Kumar Yadav AIR 2015 Supreme Court 3501**” has held that mere change of counsel is not a valid ground to recall witness for cross examination. The relevant paras are reproduced herein below:

23. I am also unable to accept the plea of the accused that the counsel representing him earlier was incompetent, being a novice and that he is entitled to recall all the prosecution witnesses now that he has engaged a new counsel. Although, Sh. Alok Kumr Dubey and Sh. Ankit Bhatia, both have enrolment number of 2014 as per the Power of Attorney executed by the accused in their favour, however, to my mind the competence of a Lawyer is subjective and the date of his enrolment with the Bar Council can certainly not be said to be a yardstick to measure his competence.

24. Moreover, the competence of the new counsel may again be questioned by another counsel, who the accused may choose to engage in future.

36. The application under consideration is thus nothing but an attempt to protract the trial and in fact seek an entire retrial. There is no change in circumstances except change of Counsel, which, to my mind, is no ground to allow the application. Interestingly, in para 17 of the application, it has been contended that the present counsel is not aware of the scheme and design of defence of the previous counsel and is thus at a loss and disadvantageous position to defend the accused and for conducting the case as per his acumen and legal expertise, the recalling of PWs are necessary. It may be noted that the defence of an under trial is not expected to



vary from counsel to counsel and irrespective of change of counsel, an under trial is expected to have a single and true line of defence which cannot change every time he changes a counsel. Nor can a new counsel defend the case of such an under trial as per the new scheme and design in accordance with his acumen and legal expertise.”

Therefore, going by the essentiality test, it can be clearly seen that the reasons mentioned in the application under section 348 BNSS, 2023 is only an after thought to fill the lacuna story which the court does not deem fit to allow.

11. Taking into consideration the above stated facts, I do not find considerable merit in the present petition and therefore, the same is dismissed and the order passed by JMIC, Ludhiana dated 07.03.2025(Annexure P-5) is hereby upheld qua the petitioner.

12. It is made clear that the Trial court shall proceed with the trial in accordance with the law and conclude the same as expeditiously as possible.

13. Accordingly ordered.

27.03.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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