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2025:PHHC:065798



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

**CRM-M-22484-2022 (O&M)
DECIDED ON: 16.05.2025**

RAJESH CHAUHAN

.....PETITIONER

VERSUS

VED PRAKASH AND ANR.

.....RESPONDENTS

CRM-M-22350-2022 (O&M)

RAJESH CHAUHAN

.....PETITIONER

VERSUS

VED PRAKASH AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Amit Jain, Advocate for respondent no.1.

Mr. Chetan Sharma, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

Vide this common order, this Court shall dispose off both the above-said petitions as common question of law involved therein.

CRM-M-22484-2022 has been preferred under Section 482 Cr.P.C., for setting aside/quashing of the impugned order (Annexure P-6) dated 06.10.2021

passed by the Court of JMIC, Gurugram in NACT 2921 of 2017 titled as ***Ved Prakash vs. Rajesh Chauhan*** and setting aside/quashing of impugned order (Annexure P-8) dated 02.04.2022 passed by the Court of Additional sessions Judge, Gurugram in CRR/251-2021 titled as ***Rajesh Chauhan V/s. Ved Prakash & Ors.***

CRM-M-22350-2022 has been preferred under Section 482 Cr.P.C., for setting aside/quashing of the impugned order (Annexure P-6) dated 06.10.2021 passed by the Court of JMIC, Gurugram in NACT-14865 of 2016 dated 30.11.2016 titled as ***Ved Prakash vs. Rajesh Chauhan*** and setting aside/quashing of impugned order dated 02.04.2022 (Annexure P-8) passed by the Court of Additional sessions Judge, Gurugram in CRR/250-2021 titled as ***Rajesh Chauhan V/s. Ved Prakash & Ors.***

Just to avoid repetition, the facts of the case are being taken from CRM-M-22484-2022.

Learned counsel has submitted that an application under Section 311 of the Cr.P.C. filed by the petitioner, who is an accused in a complaint under Section 138 of the Negotiable Instruments Act, has been dismissed by the learned trial Court and thereafter, the revision filed by him was also dismissed. He further submitted that in the application the petitioner again wanted to get examined CW-1 who is the complainant himself. He also submitted that although he had earlier filed an application under Section 311 of the Cr.P.C. which was dismissed and thereafter, he filed another application under Section 311 of the Cr.P.C. which was however allowed and although the present application under Section 311 of the Cr.P.C. is the third application but the need which has arisen rather goes to the root of the controversies. He also submitted that the complainant deliberately did not

produce the account statement of the bank whereby the amount was returned back to the complainant by way of various transactions. Thereafter, during defence the petitioner got examined DW-2 Joginder Singh Yadav, Special Assistant in Bank of Baroda, who had produced the bank statements and has also deposed that there were number of transactions by the petitioner transferred in the account of the complainant and vice-a-versa also which goes into show that the cheque amount itself was fully adjusted, and therefore, there was no legally enforceable debt made against the petitioner. He further submitted that it is the duty of the petitioner to rebut the presumption under Sections 138 & 139 of the Negotiable Instruments Act and the same can be done only by way of cross-examination of CW-1. He also submitted that the aforesaid statement of DW-2 was recorded on 07.03.2019 and the earlier two applications were prior to the same. He further submitted that in case the petitioner is able to prove on the basis of the aforesaid DW-2 statement that the cheque amount has already been returned to the complainant then this aspect is not only important but also goes to the root of the controversies affecting the merits of the main case itself and no prejudice will be caused to the complainant in this regard.

In the present case during the defence evidence, the petitioner examined DW-2 (Joginder Singh Yadav), Special Assistant at Bank of Baroda, on 07.03.2019, who produced detailed bank statements and testified regarding mutual monetary transactions between the petitioner and the complainant, suggesting full adjustment of the cheque amount in question. These records cast serious doubt on the existence of a legally enforceable debt or liability at the time of issuance of the cheque.

The right to cross-examine CW-1 in light of testimony of DW-2 is crucial to discharge the burden under Sections 138 and 139 of the Negotiable Instruments Act, which presume a legally enforceable debt. Recalling CW-1 would allow the petitioner to confront him with the new evidence, enabling a fair and just adjudication of the real controversy. The recall is not a tactic to delay the proceedings but a necessary step to ensure that all relevant facts are brought before the court.

Section 311 Cr.P.C. (now Section 348 of BNSS, 2023) empowers the court to summon or recall any witness at any stage if their evidence appears essential to the just decision of the case. The Hon'ble Supreme Court in ***Rajaram Prasad Yadav v. State of Bihar*** [(2013) 14 SCC 461] and ***Natasha Singh v. CBI*** [(2013) 5 SCC 741] held that the power under Section 311 must be exercised judiciously but liberally, especially when it furthers the cause of justice. It is a well-settled principle that procedural laws are handmaids of justice, and a fair opportunity to rebut the presumption under Section 139 is a fundamental right of the accused.

The petitioner undertakes to conduct the cross-examination of CW-1 expeditiously and without causing any delay.

The complainant, who is already examined as CW-1, will not suffer any prejudice by his recall, as the intended cross-examination is confined to the newly surfaced transactions.

In the light of above and without commenting upon the merits, both the petitions are disposed off with a direction to the petitioner to cross-examine the CW-1, i.e., in the form of bank statement which are produced in evidence by

DW-2 Jogender Singh Yadav within next two effective dates from the date of receipt of certified copy of this order.

However, the above-said order subject to payment of cost of Rs.25,000/- to be paid to the Punjab & Haryana High Court Bar Clerk’s Association, Chandigarh.

Ordered accordingly.

Pending application(s), if any shall disposed off, accordingly.

16.05.2025
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>