



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

**CRR-1069-2025 (O&M)
Date of decision: 07.11.2025**

M/S Andeep Agro Feeds through its proprietor

.....Petitioner

Versus

Gurmeet Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Varun Goyal, Advocate for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. Instant revision petition has been filed by the petitioner, for setting aside and quashing of impugned order dated 07.02.2025 passed by learned Judicial Magistrate First Class, Jalandhar whereby application filed by the complainant under Section 311 of Cr.P.C. for recalling the witness i.e. C.A. Jalandhar to prove the statement of account Ex-P5 in complaint bearing No.NACT-2347-2020 titled as 'Andeep Agro Feeds Vs.Gurmeet Lal' was dismissed.

2. For the bouncing of cheque bearing No.056769 dated 08.03.2020 for a sum of Rs.9,57,415/-, after completion of the legal formalities, complaint under Section 138 of the Negotiable Instruments Act, 1881 has been instituted by the petitioner/complainant against respondent-Gurmeet Lal. Petitioner/complainant had already filed his affidavit in examination-in-chief and thereupon was cross-examined on 20.01.2023. Relevant part of the cross-examination for proper appreciation of the facts and to decide the controversy involved herein is reproduced here as under:-

“CW 1 Harbhajan Singh recalled for cross examination.

I have produced on record documents reflecting to the fact that I am the Prop. of Andeep Argo. The witness was confronted with the judicial file where no such documents is present. I have seen Ex.C5 which is the photocopy and the same is neither signed by anybody nor the same was stamped of our firm. The photocopy and



electronic record produce by me alongwith my affidavit is not supported by certificate u/s 65B of Indian Evidence Act. It is correct that copies of bills Mark D1 to Mark D18 are the photocopies and neither signed by anybody nor the same was stamped of our firm. It is correct that computer from which the prints of account statement and bills were taken is not being operated by me. It is correct that I have not obtained any certificate from the person who is operating the same with regard to the fact that this record is correct as per original record. The accused is working with out firm since last 2 years. We are duly maintaining our record but our business does not fall under the category of GST. The goods were supplied to accused through transport but I cannot produce any bility of any transport from which the goods were supplied to accused. I cannot produce any receiving slip duly signed by accused with regard to the receipt of the goods. I have not obtained any blank cheque from the accused at the time when I started the business with accused. Vol., cheque was given to me and the same was duly filled in. Except the cheque in question, accused never issued any cheque in my favour. I am Income Tax Assessee. I have not reflected any entry with regard to accused in my ITRs to the fact that the accused is to pay Rs.9,57,415/- to me. I do not know if on the cheque Ex.C1. The name Andeep Argo Feeds is written in different writing and the signatures of accused is in Punjabi language. Vol., accused must be knowing the same. I do not know any man by the name of Bunty from Begowal.”

3. After closing of the prosecution evidence on 05.10.2023, application was moved by the petitioner on 28.02.2024 when already proceedings had been conducted by fixing dates for leading of defence evidence by the respondent/accused. In the application dated 28.02.2024, filed under Section 311 Cr.P.C. for recalling witness i.e. C.A.-Vishal Kumar, to prove the account statement (Ex.C5), already having been placed by the petitioner during his own evidence and the same has been dismissed. Learned trial Court while dismissing the application, noticed that complainant had closed his evidence on 05.11.2023 and thereupon statement under Section 313 Cr.P.C. was also recorded. Even defence evidence had also been concluded, thus, trial Court held that at this stage, allowing of the application would amount filling up the lacuna in the case of the complainant. For reference, the operative part of the observations in Paragraph No.5 of the order dated 07.02.2025 passed by learned



Judicial Magistrate First Class, Jalandhar is reproduced as under:-

“The perusal of the file shows that the complainant has already led his evidence and closed his evidence on 05.10.2023 and thereafter, statement of accused u/s 313 Cr.P.C. was recorded and thereafter, the case was fixed for evidence of accused and thereafter, the evidence of accused has already been concluded. When evidence of the complainant has already been concluded and he himself has closed his evidence and further, the complainant has already been cross-examined at length by learned counsel for the accused and thereafter, the evidence of the accused has already been concluded, the complainant can not be allowed to examine the CA in order to prove the account statement Ex.C5 as prayed for. If the present application is allowed, it would amount to filling up the lacuna and it would lead to De novo trial. Accordingly, keeping in view the above discussion, no ground is made out to allow the present application. Accordingly,, with these observations, the present application stands dismissed being devoid of merits.”

4. Challenging the order passed by learned Judicial Magistrate First Class, Jalandhar (trial Court), learned counsel argues that in fact application had been moved on 28.02.2024 and the same was required to be decided and it was incumbent upon the trial Court to decide the same at the earliest, merely by disposing it after a period of one year, when the trial proceedings were at the fag end, would not deprive the petitioner from leading of evidence which has been sworn by him through his application under Section 311 Cr.P.C.

5. After considering the submission addressed by learned counsel and settled proposition of law in the criminal proceedings, it is the accused which has the privilege to hide his defence or to open it, if so chosen, even at the last stage of the trial. Here is the case, where respondent/accused had opened its defence during the cross-examination on 20.01.2023, when all the relevant questions in regard to admissibility/in-admissibility of the account statement Ex.C5 were put to the complainant during his cross-examination (*supra*). Even if the contention of the petitioner is accepted, that the application of the petitioner had been moved on 28.02.2024, undoubtedly, complainant

after facing a situation during cross-examination, realize his fault and then the application has been moved to fill the lacuna, to deprive the accused from drawing any benefit out of the cross-examination of the complainant.

6. In the view point of this Court, after disclosing of the defence by the accused, complainant/prosecution could not be permitted to fill the lacuna, which expectedly is going to be taken into consideration, by the trial at the final stage by the trial Court and in all probability accused would try to extract benefit out of it.

7. In view of the aforementioned facts and reasoning, this Court does not find any illegality in the impugned order dated 07.02.2025 passed by learned Judicial Magistrate First Class, Jalandhar.

8. Accordingly, present petition is dismissed.

07.11.2025
Harish Kumar

(SANJAY VASHISTH)
JUDGE

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