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

**CRM-M-23331-2025
Date of Decision: 01.05.2025**

CHAMKAUR SINGH**.....PETITIONER****VERSUS****LOVE KUMAR****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. G.S.Sidhu, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 528 BNSS, 2023 for setting aside of order dated 11.04.2025 passed by Additional Chief Judicial, Magistrate, Barnala (in short 'trial court') in case no.NACT/50/2019 dated 24.10.2019 under section 138 of Negotiable Instruments Act 1881 vide which the Application u/s 348 BNSS has been dismissed.
2. Factual matrix of the case unfolds that respondent i.e Love Kumar has filed a complaint under section 138 of Negotiable Instruments Act,1881, on the ground that in February 2018, the petitioner had borrowed an amount of Rs.2,01,00/- on the pretext that he has to purchase some land from one Gurmail Singh and agreed to pay back the said amount to the complainant-respondent alongwith interest at 18% per annum. Further, it is alleged that the petitioner has



given one cheque no. 000013 dated 19.08.2019 for an amount of Rs.1,00,000/- from his A/C no. 32270110029800 of UCO Bank, Branch Bhadaur, Tehsil and District Barnala, subsequently on 20.02.2018 the petitioner again approached respondent for borrowing more amount of Rs.4,00,000/- on the pretext of raising construction on the land/site purchased by the petitioner to which the respondent further lend Rs.2,64,000/- to the petitioner wherein he agreed to pay back the said amount alongwith interest at 18% per annum and thereafter issued cheques no. 000014, 000015, 000016 for an amount of Rs.1,00,000/-, 1,00,000/-, 64,000/- which on presentation were dishonoured and subsequently the respondent filed one complaint under section 138 of Negotiable Instruments Act,1881.

3. Counsel for the petitioner contends that the petitioner had also filed one complaint bearing no. CRR-24-2024 against the respondent and the same was defence of the petitioner and during the cross examination on 08.11.2024, some questions regarding the pending criminal complaint and defence of the petitioner in the criminal revision were left inadvertently. Further, the Ld. ACJM, Barnala has failed to appreciate that the cross examination of CW-1 Love Kumar is necessary for just decision of the case as the respondent-complainant has filed a false and frivolous complaint by misusing the cheques of the present petitioner.

4. He further contends that the trial court has failed to acknowledge the fact that cross-examination of the respondent-complainant in line with defence of the petitioner in CRR-24-2024 is very much necessary for the proper adjudication of the case.

5. Heard learned counsel for the petitioner.



6. The present revision pertains to grievance of the petitioner against the impugned order dated 11.04.2025 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.

7. 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.

8. 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.

9. 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”



10. 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, it is crystal clear that the application seeking recalling of the witnesses for further cross-examination was filed after a delay of four months from the date of conclusion of the initial cross examination i.e 08.11.2024.

11. 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 petitioner's knowledge at the time of cross examination , by no stretch of imagination the court can now allow the re-examination of the respondent/complainant only for the reason that despite exercising due diligence, the petitioner was unable to confront the respondent as witness with those facts of which he was fully aware of being the complainant in the matter itself.

12. 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.

13. 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 dated 11.04.2025 passed by Addl. Chief Judicial Magistrate, Barnala is hereby upheld qua the petitioner.

14. 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.

15. Accordingly ordered.

01.05.2025
anuradha (v)

(SANDEEP MOUDGIL)
JUDGE

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