



CRM-M-36945-2025

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

CRM-M-36945-2025

Date of decision: 17.07.2025

ANIEL KUMAR SAHA

.... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.... Respondents

CORAM: HON'BLE MR. JUSTICE H.S.GREWAL

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

H.S.GREWAL, J. (ORAL)

1. The instant petition has been filed under Section 528 of BNSS, 2023 for setting aside of order dated 04.01.2025 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Gurugram whereby the application filed by the petitioner under Section 311 Cr.P.C. in a complaint case No.10992/2018 registered under Section 138 of the Negotiable Instruments Act for recalling of the complainant witness for cross examination has been dismissed.
2. Learned counsel for the petitioner contended that the complainant CW1 Jai Agnani was cross examined on 03.02.2024 but the petitioner was not produced on that day as the production warrants against him were not issued³ This fact is clear from the order dated 03.02.2024 (Annexure P-8). However, the cross-examination of the complainant was completed on the very same day in the absence of the present petitioner who was accused in the proceedings. The petitioner was confined in custody as is evident from zimni orders dated



09.01.2023, 07.10.2023, 04.11.2023, 20.01.2024 and 03.02.2024 (Annexures P2 to P-8, respectively). Therefore, the petitioner has made an application under Section 311 Cr.P.C. for recalling of the complainant CW1 Jai Agnani for cross-examination but the same was declined by the trial Court vide impugned order dated 04.01.2025 (Annexure P-1) on the ground that merely because of the fact that the accused/petitioner was in custody, no ground is made out to recall the complainant for cross-examination. It has also been observed that the complaint case was filed in the year 2018 and the cross-examination was conducted in the year 2024. Learned counsel, therefore, submits that the observations made by the trial Court itself are not appropriate to decline the application under Section 311 Cr.P.C. wherein the evidence was closed in the absence of the petitioner-accused.

3. I have heard learned counsel for the petitioner and perused the material available on record.

4. In view of the limited prayer made by the learned counsel for the petitioner, this Court deems it appropriate to decide this case without issuing notice to the respondents. Keeping in view the facts and circumstances of the case and limited prayer made by the counsel for the petitioner, the order dated 04.01.2025 (Annexure P-1) is set aside and the petitioner is granted one opportunity to cross-examine the complainant on the date fixed by the trial Court. This exercise should be done as and when the petitioner is produced before the learned Court on production warrant. However, no further adjournment shall be granted to the petitioner for cross-examination of the complainant CW1-Jai Agnani.



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5. Accordingly, the petition stands allowed.

(H.S.GREWAL))
JUDGE

17.07.2025
Sonia Puri

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