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

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CRM-M-46421-2025 (O&M)

Date of decision: 22.08.2025

Shyam Garg**...Petitioner****Versus****Kotak Mahindra Bank Ltd.****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the order dated 21.02.2025 (Annexure P-6), passed by the learned trial Court in Criminal Complaint bearing No. 1359 of 2019, titled as **KMBL vs. Shyam Garg**, filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N. I. Act'), whereby the cross-examination of complainant/CW-1 Shobit Malhotra has been treated as 'nil' and also for setting aside the order dated 31.07.2025, whereby an application filed by the petitioner under Sections 145 and 145(2) of the Indian Evidence Act for allowing him to cross examine the complainant, had been dismissed.

2. Learned counsel for the petitioner has submitted that he is facing trial in the aforesaid complaint and has been regularly appearing before the learned trial Court. However, on 21.02.2025, the cross examination of the said witness has been treated as nil on the ground that counsel for the petitioner had stated that he could not cross examine the witness. It is argued that the counsel for the petitioner was neither present in Court on that day nor did he

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make any such statement. The petitioner had thereafter filed an application under the provisions of the Indian Evidence Act for allowing him to cross examine the said witness but the same had also been dismissed. Learned counsel for the petitioner has further argued that it is settled law that the right to cross examination is an important right given to an accused and the trial Court should not have been hyper-technical in passing the impugned order. A great prejudice shall be caused to the rights of defence of the petitioner, if the aforesaid PWs are not allowed to be cross examined. Hence, it is prayed that the petitioner may be granted one opportunity to further cross examine the aforesaid witnesses.

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

4. After going through the material placed on record, it nowhere reflects that either the counsel for the petitioner was not present in Court on the said date or that he had not made any such statement. The above conduct of the petitioner is certainly indicative that he has been negligent in pursuing the case. However, his negligence is not of the kind which would leave the petitioner with such consequence that cross examination of a significant witness be treated as nil as the same will definitely prejudice the right of defence of the petitioner, which is indeed an important right given to an accused. The primary duty of the Court is to reach as close to the truth as possible by obtaining proper proof of such facts which would lead to a just and correct decision of the case, which cannot be done without giving an opportunity to the petitioner to further cross examined the said witnesses. The Courts are under legal obligation to make every possible effort, in the given

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fact situation of each case, to reach the truth so as to enable itself to arrive at a just decision for achieving the laudable object of doing substantial justice between the parties. Hence, this Court is of the considered opinion that the petitioner deserves some leniency. Accordingly, the petition is disposed of. The learned trial is directed to accord one effective opportunity to the petitioner to cross examine the aforesaid witness.

5. However, this relief shall be subject to payment of cost of Rs. 10,000/- to be deposited by the petitioner with the learned trial Court, which shall be disbursed to the complainant/Bank.

22.08.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No