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

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CRM-M-53415-2025 (O&M)

Date of decision: 22.09.2025

Sardul Singh**...Petitioner****Versus****M/s Joginder Singh Balbir Singh****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Omkar Chauhan, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), is for quashing of order dated 12.08.2025 (Annexure P-4), passed by the Court of learned Judicial Magistrate First Class, Kurukshetra in case bearing No. NACT-673-2021, titled as ***M/s Joginder Singh Balbir Singh vs. Sardul Singh***, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby an application filed by the petitioner under Section 348 of BNSS seeking permission to recall CW-1 for his cross examination, had been dismissed.

2. Learned counsel for the petitioner has submitted that he has been summoned and is facing trial in the aforesaid complaint. During the pendency of the aforesaid complaint, the complainant/proprietor of the respondent-firm had died and his legal representatives were impleaded, vide order dated 13.04.2023. Thereafter, on 14.06.2023, notice of accusation was served upon the petitioner. On the same date i.e. 14.06.2023, he had moved an application for cross examination of CW-1, which was allowed and the cross examination

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of the said witness was adjourned to 11.09.2023. Thereafter, the case was adjourned from time to time due to several reasons. On 18.11.2024, on account of absence of counsel for the petitioner, the learned trial Court had proceeded further by recording cross examination of CW-1 as nil. The petitioner had filed an application on 21.01.2025 under Section 348 of BNSS (*which is pari materia with Section 311 of Cr.P.C.*) seeking permission to cross examine the CW-1 but the same had been dismissed by the learned trial Court by passing the impugned order. It is argued that the absence of the counsel representing the petitioner before the Court concerned on the said date was neither intentional nor deliberate. 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 learned 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 witness is not allowed to be cross examined. Hence, it is prayed that the petitioner may be granted one opportunity to cross examine the said witness.

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

4. A perusal of the record as well as the zimni orders passed by the learned trial Court reveals that the case was being adjourned due to several reasons. However, on 18.11.2024, due to non-appearance of counsel for the petitioner, cross examination of CW-1 had been treated as nil. The above conduct of the counsel for 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

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examination of such 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 cross examine the said witness. The Courts are under legal obligation to make every possible effort, in the given 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 CW-1.

5. However, this relief shall be subject to deposit of costs of Rs.5,000/- with the learned trial Court, which shall be disbursed to the complainant.

22.09.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*