



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CRM-M-55012-2025
Date of decision: 17.11.2025

GANGOHI TIMBER TRADERS AND ANOTHERPetitioners

VERSUS

TEJINDER CHAWLARespondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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

VINOD S. BHARDWAJ, J. (Oral)

CRM-43741-2025

Application is allowed as prayed for and the complaints dated
17.01.2020 and 07.08.2020 are taken on record as Annexures A-1 & A-2.

CRM-M-55012-2025

The present petition has been filed under Section 528 BNSS
seeking setting aside of the order dated 18.08.2025 passed by the Judicial
Magistrate 1st Class, Kurukshetra in case bearing No. NACT-175-2020 titled
“*Tejinder Chawla versus Gangoh Timber Trader*”, instituted under Section
138 of the Negotiable Instruments Act, 1881.

2. Learned Counsel appearing on behalf of the petitioners *inter
alia* contends that the respondent-complainant had filed the complaint

against the petitioners on the allegation that he had advanced a sum of Rs. 27.50 lakh to the petitioners herein and that in discharge of the said legal liability, five cheques (viz. two cheques of a denomination of Rs. 8 lakh each; two cheques of denomination of Rs. 5 lakh each and one cheque for a sum of Rs.1.50 lakh) had been issued by the petitioners herein drawn on Oriental Bank of Commerce. The four cheques, viz., two cheques for the amount of Rs. 8 lakh each and two cheques for the amount of Rs. 5 lakh each were dishonoured for want of funds, while one cheque for the sum of Rs. 1.50 lakh was encashed on its presentation. A common complaint had been filed in relation to the two dishonoured cheques for the sum of Rs. 5 lakh each.

3. Learned Counsel appearing on behalf of the petitioners contends that the defence of the petitioners, in response to the legal notice, was to effect that their blank cheques had been stolen and the same had been misused by the respondent-complainant. He contends that notwithstanding the said defence, no evidence was led by the complainant to establish that the signatures on the cheque in question were those of the petitioners herein and that the same had not been forged. He contends that during the course of defence evidence, the petitioner adduced that the signatures, as appearing on the cheques, are separate from the signatures that are available on the Account Opening Form. It was thereafter that an application was moved by the respondent-complainant for leading additional evidence.

4. Vide the impugned order dated 18.08.2025, the said application has been allowed. Hence, the present petition.

5. Learned Counsel contends that the trial Court has failed to appreciate the law as laid down by the Supreme Court in the matter of

“Rajaram Prasad Yadav versus State of Bihar and another” reported as ***2013 (3) RCR (Criminal) 726*** to the effect that power under Section 311 cannot be invoked so as to fill the lacunae in the case. The relevant extract of the judgment reads thus: -

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it

apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than

protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

6. It is vehemently argued by the Counsel for the petitioners that it was their precise defence that all the cheques were misused by the complainant after stealing the same and were never signed by them. Yet, the respondent-complainant failed to take sufficient precautions to establish that the petitioners actually signed the cheque in question and that there was no signature mismatch. Hence, the present application was highly delayed and is only in furtherance of an intent to fill up the lacunae only after the

petitioner had established that he was not a signatory to the cheques in question and there was a signature mismatch.

7. I have heard learned Counsel appearing on behalf of the petitioners and have gone through the documents appended along with the present petition as well as the judgment of **Rajaram Prasad Yadav (supra)** relied upon by the Counsel for the petitioners.

8. Before proceeding further in the matter, it would be relevant to refer to the relevant extract of the impugned order passed by the trial Court.

The same reads thus:-

*“Reply filed. The learned counsel for the respondents-accused has stated that, the application is not maintainable because the complainant is having full knowledge regarding the facts that the accused has denied his signatures which is mentioned in reply dated 24.01.2020 of legal notice dated 10.01.2020 given by the counsel of the accused to Shri Anand Garg, Advocate, which the complainant himself tendered as Ex.C11 in complaint NACT No. 175/2020, in which specifically mentioned that Mr. Tejinder Chawla complainant had misused the cheques of the accused by forging his signatures and filling them up without the knowledge and consent of the accused. He further stated that, the accused has specifically cross-examined the complainant on this point and denied his signatures on the alleged Aapsi Rajinama dated 23.11.2019 and specifically stated that alleged Aapsi Rajinama dated 23.11.2019 is a forged document. He further stated that **"The Hon'ble Punjab & Haryana High Court held that, if complainant wanted to examine the document expert, the complainant should have done so while he was leading his evidence. In criminal complaint case, the question of rebuttal evidence by complainant does not arise"**.*

He further stated that, the application has been filed by the complainant to fill up the lacuna in this case, which cannot be allowed. "The Hon'ble Punjab & Haryana High Court held that if complainant knowing fully well that the accused has denied his signatures on the cheque did not choose to examine a expert, he cannot be permitted to examine an expert by way of rebuttal to defence evidence of a handwriting expert. It cannot be said an inadvertent mistake- Section 311 of Cr.P.C is not intended to fill up the lacuna".

He further stated that, the applicant has already availed more than sufficient opportunities to lead evidence and no such evidence has been produced by the applicant and there is no cause and ground in the application to allow it. The applicant-complainant is wasting the precious time of this court by forging and fabricating the present application under Section 348 of BNSS without any cause and grounds and delaying the proceedings of the complaint intentionally and knowingly to harass the accused. At last dismissal of the application is prayed.

Arguments advanced. Case file perused.

By moving the present application, the applicant-complainant wants to get examined the handwriting and fingerprint expert in order to get compared the signatures of the accused from the original cheque bearing No. 637456 dated 24.12.2019 amounting to Rs. 1,50,000/- encashed by the bank with the signatures over the cheque in question as well as from the specimen signatures of the accused with his banker i.e. Oriental Bank of Commerce, Main Branch, Jagadhari Road, Yamunanagar as well as to disprove the report of DW1 and also with the signatures of the accused over the mutual settlement dated 23.11.2019. The perusal of the case file shows that, the accused was examined under Section 313 of Cr.PC

*stated that, he has not signed the cheque in question Ex.C1. It is the defence of the accused that the cheque did not bear his signatures. In complaint under 138 of NI Act presumptions are in favour of the complainant and onus is upon the accused to rebut the presumption and raise a probable defence. It is important to mention here that, in case under Section 138 of NI Act the cognizance use to taken on the primary evidence lead on behalf of the complainant for dishonour of cheque cases. The presumption u/s 139 and 118 of NI Act lies in favour of the complainant. It is for the accused to rebut the said presumption by leading the evidences. In case in hand, the accused has stated that, the cheque in question has not been signed by him and in support of his defence, the accused has examined Handwriting Expert and compared the signatures from in the disputed cheque with the signatures upon the bank opening account form. Now, it is for the complainant to lead evidence from his side to counter the evidence placed on record by the accused, because now the onus has been shifted upon the complainant, therefore, this court is of the considered opinion that, complainant be given opportunity to discharge the same. Hence, the present application stands **allowed.***

(Emphasis Supplied)

9. A specific question had been put to the Counsel for the petitioners as to whether during the cross-examination of the witnesses led by the complainant-respondent, any suggestion was put to the witnesses that the cheques in question had not been signed by the petitioners herein; he fairly concedes that no such suggestions were put forth.

10. It was also put to him as to whether the aforesaid aspect, that the signatures in question were not signed by him, was a part of his defence

at the time of recording his statement under Section 313 Cr. P.C.

11. Learned Counsel fairly contends that he had taken this defence only at the stage of recording of his statement under Section 313 Cr. P.C.

12. Counsel for the petitioners has laid much emphasis on the response given by him to the legal notice wherein he said that his blank signed cheques had been stolen by the respondent-complainant.

13. The unauthorized removal of the cheques, as alleged, does not by itself mean that the signatures on the cheque were also forged. The same cannot by itself be construed as a suggestion raised by the petitioners. In the absence of any suggestion having been put to the witnesses, there can be no assumption that the petitioners herein continued with the said line of defence merely because such a thing was mentioned in the reply to the legal notice. Hence, a new line of defence was taken by the petitioners and that too only at the stage of recording of the statement under Section 313 Cr. P.C. That being the case, once a new defence was raised at such an advanced stage, the respondent-complainant cannot be said to have erred in moving an application for leading additional evidence to establish his case to the effect that the cheque in question was actually signed by the petitioners herein.

14. The judgment relied upon by the petitioners would not come much to the aid of the petitioners in as much as the clause 'e' thereof specifically holds that even though "the power cannot be dubbed as a power to fill up the lacunae in prosecution case" however, the same further reads an exception, "unless the fact and circumstances in the case make it apparent that the exercise of the power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice". The same judgment also specifically holds that the discretion has to be exercised so as

to meet the ends of justice and not truncate the same.

15. Invariably, once the line of defence has been taken by the petitioners at a very advanced stage, the extension of an opportunity to the complainant to prove his case on the said aspect cannot be said to fill up the lacunae.

16. The Court also rightly noticed that there being a presumption of cheque being issued in due course, the onus had to be discharged only after the accused-petitioner led such evidence. The occasion for the complaint thus arose to counter the defence.

17. The fact that the petitioners did not put up any such suggestion, a presumption thus flows against them that they had given up such a line of defence during trial, despite anything said in the legal notice. Once the said line of defence is revived by them at the stage of recording of statement under Section 313 Cr.P.C., it would amount to setting up of a new case, thus taking the respondent-complainant by surprise. The moving of an application to lead evidence, so as to respond to a new case or line of defence that has been set up by the petitioners, would not be the same thing as filling up the lacunae on the part of the complainant.

18. Besides, the petitioners herein have already led their evidence to show that the signatures were at variance, hence, an effort made by the respondent-complainant, to establish their case and prove that the said argument is devoid of merit, cannot *per se* be held to be an exercise that would cause an irreparable prejudice or a travesty of justice. Rather, the same would amount to extending a fair opportunity to the respondent to establish his case and to counter an argument/defence which has been raised by the petitioners herein at a much later stage.

19. I find that there is no illegality, impropriety and perversity in the order that has been passed by the trial Court.
20. Finding no merit, the present petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 17, 2025
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No