



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

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**CRM-M-55252-2025
Decided on:29.09.2025**

M/s Atwal Sunder Marketing Pvt. Ltd. and another

...Petitioners

Versus

M/s Gaurav Electronics and another

...Respondents

Coram : Hon'ble Mr. Justice Rajesh Bhardwaj

**Present: Mr. Ankit Chauhan, Advocate,
for the petitioner.**

Rajesh Bhardwaj, J.

1. Prayer in the instant petition, filed under Section 528 of the BNSS, 2023, is for quashing the impugned orders dated 26.08.2025 (Annexure P-1) passed by the learned Judicial Magistrate First Class, Ludhiana in COMA No.8619 of 2021 and the order dated 06.09.2025 (Annexure P-2) passed by the learned Additional Sessions Judge, Ludhiana in CRR No.550 of 2025, whereby the application filed by the petitioners under Section 353 of the BNSS, 2023 for allowing the accused-petitioner Karamjit Kaur to depose as a defense witness, subject to cross-examination, has been dismissed.

2. Succinctly, the facts of the case are that respondent no.2-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") against petitioner no.1-firm and its Directors including petitioner no.2 and co-accused Vijay

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Kumar, in which it was alleged that Vijay Kumar and petitioner no.2 had approached the complainant firm for the supply of electronic items and a sum of Rs.1,13,23,181/- was outstanding towards them. However, the matter was settled for Rs.1,12,13,200/- and accused Vijay Kumar, being one of the Directors and authorized signatory of the firm, issued two cheques for the discharge of the said liability, however, on presentation of the same, the same were dishonoured with the remarks “payment stopped by drawer”. On filing the complaint, an application under Section 353 of the BNSS, 2023 was filed by accused Vijay Kumar for granting him permission to appear as a witness in defence and the same was allowed by the learned trial Court. However, no application was filed by petitioner no.2 Karamjit Kaur during the entire defense evidence. It is thereafter that the application was filed for allowing her to be examined as a defence witness but the same was declined by the learned trial Court vide impugned order dated 26.08.2025. The said order was assailed by the petitioners by way of filing of revision petition before the learned Additional Sessions Judge, Ludhiana, but the same was equally declined vide order dated 06.09.2025. Thus, both the Courts recorded concurrent findings vide impugned orders. Hence, the petitioners are before this Court by way of filing the present petition assailing both the impugned orders.

3. Learned counsel for the petitioners has vehemently contended that the impugned orders passed by the learned Courts below are illegal, unjust, improper and, thus, being unsustainable in the eyes of law, deserve to be set aside. It is contended that after hearing the final arguments, the case was transferred to the Court of the learned JMIC, Ludhiana on 26.05.2025. On 10.06.2025, the petitioners sought adjournment to move transfer application to transfer the complaint to the learned CJM, Ludhiana, which was dismissed on 08.08.2025 and a new counsel was engaged. Thereafter, the application filed

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by petitioner no.2 dated 19.08.2025 under Section 353 of the BNSS, 2023, seeking permission to depose herself as a defense witness, has been declined without appreciation of facts and circumstances of the case and the law settled. It is submitted that right of an accused to lead defence evidence including examining himself/herself as a witness under Section 353 of the BNSS, 2023, is a fundamental right enshrined under Article 21 of the Constitution of India, however, the said fact has not been taken into consideration by both the Courts below. It has been further contended that the observation of the learned Court while dismissing the revision petition as interlocutory is erroneous. He relied upon a judgment of Hon'ble the Supreme Court in the case of **E. Vanitha vs. Rajasekaran alias Raju (2020) 10 SCC 61** and submitted that the impugned orders, being perverse, deserve to be set aside.

4. I have heard learned counsel for the petitioners and perused the available record with his able assistance.

5. The precise issue raised by learned counsel for the petitioners before this Court is to the effect that the complainant has filed the complaint under Section 138 of the Negotiable Instruments Act, in which the petitioners filed an application under Section 353 of the BNSS, 2023 for granting permission to petitioner no.2 Karamjit Kaur to depose herself as defence witness has been illegally declined. Perusal of the record would show that co-accused Vijay Kumar has filed the application to be examined himself as a defence witness and the same was allowed by the trial Court. However, petitioner no.2 did not file any such application rather the defence counsel suffered a statement in presence of the petitioners before the trial Court that he does not want to examine accused Karamjit Kaur, i.e. petitioner no.2. Thus, the defence evidence was closed on 08.04.2025. The case was adjourned and thereafter, the transfer application was filed with the learned Chief Judicial

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Magistrate, Ludhiana and the same was dismissed on 08.08.2025. On 19.08.2025, accused moved an application under Section 353 BNSS (erstwhile Section 315 Cr.P.C.) for allowing accused Karamjit Kaur to depose herself as defence witness.

6. For resolving the issue involved in the present case, the provision of Section 353 B.N.S.S. is necessary which read as under:

“353. Accused person to be competent witness.

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that-(a) he shall not be called as a witness except on his own request in writing; (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 101, or section 126, or section 127, or section 128, or section 129, or under Chapter X or under Part B, Part C or Part D of Chapter XI, may offer himself as a witness in such proceedings: Provided that in proceedings under section 127, section 128, or section 129, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

7. In view of the facts and circumstances of the case, it is apparent that the instant complaint was filed for dishonour of two cheques bearing

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firm. Even co-accused also issued eight cheques of different dates for different amount being one of the Director in favour of the complainant for the amount due towards him and on the dishonour of the said cheques, different complaint including the present complaint, were filed. In the present complaint case, petitioner No.2 did not move any application to appear and depose as witness despite the statement made by counsel for the complainant that he want to cross-examine both the accused and one defence witness Paramjit Singh. Even the trial Court had observed that the defence counsel does not want to examine Karamjit Kaur as number of opportunities were accorded to all the accused including Karamjit kaur to give their depositions in their defence. The substantial right of accused was not affected by virtue of dismissal of said application as both the accused namely Vijay Kumar and Karamjit Kaur, were the Directors of the Firm, who issued cheques for business transactions to the complainant firm. The accused was accorded sufficient opportunities to appear and depose as witness by moving the appropriate application at that stage but she did not exercise her right at the relevant stage. The matter before the trial Court was adjourned many times for conclusion of defence evidence, however, accused Karamjit Kaur, did not depose there as well. The Courts below rightly dismissed application filed by petitioner No.2 on the ground that the same was filed just to prolong the trial and even no justification was given by her as to why she did not exercise her right at the relevant time. Even the defence evidence in oral was closed much prior to the moving of application under Section 353 B.N.S.S. (erstwhile as Section 315 Cr.P.C.) by the accused. The conduct of accused clearly shows that the said application was moved to further delay the proceedings of the case before the trial Court.

8. There is no dispute that time and again the power granted under

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liberal manner, if the Court finds it appropriate. However, the same cannot be allowed in a mechanical manner. Thus, this Court finds no infirmity in the impugned orders passed by both the Courts i.e. the trial Court and Revisional Court. The petitioners fail to make out a case, which qualifies it for the grant of relief claimed for, on the anvil of the law settled.

9. Resultantly, the present petition being devoid of any merit, is hereby dismissed.

September 29, 2025
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(Rajesh Bhardwaj)
Judge

Whether Speaking/Reasoned: NO/YES
Whether Reportable: NO/YES