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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2567/2023 & CRL.M.A. 9735/2023**

ASHWANI ARORA

.....Petitioner

Through: Mr. Sanjay Rastogi with Mr. Aman
Rastogi, Mr. Udit Singh and
Ms. Navya Gupta, Advocates.

versus

SAHIB SINGH

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

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10.09.2025

1. Petitioner has assailed an order dated 22.02.2023, passed by learned Metropolitan Magistrate-04 (NI) Act (West), Tis Hazari Courts, Delhi in Complaint Case No. 5615/2016 titled "Sahib Singh v. Ashwani Arora", whereby the application under Section 311 Cr.P.C. filed by the petitioner to cross examine the complainant was dismissed. Primarily, on the ground that the petitioner was granted various opportunities to cross examine the complainant, but yet he did not avail such opportunities and now since the statement of petitioner/accused under Section 313 Cr.P.C. has been recorded, no such opportunity can be granted to the petitioner.

2. The brief facts of the case as set up by the Petitioner, proprietor of M/s Choice Store, Rani Bagh, Delhi, are as follows: the Petitioner shared a long-standing family relationship of about 15–20 years with the Respondent.

3. In June 2013, the Petitioner sought two friendly loans of ₹5,00,000 each from the Respondent to expand his business. The first loan of ₹5 lakhs was advanced on 04.06.2013 in the presence of one Mr. Gyanender, and the



second on 21.06.2013 in the presence of one Mr. Rohtas, totalling ₹10,00,000. The Petitioner had assured repayment by the end of 2013 but failed to do so. Towards repayment, the Petitioner issued a cheque of ₹10,00,000 dated 13.02.2014. However, the cheque was dishonoured on 20.02.2014 with the remark “Kindly contact drawer/drawee bank.”

4. Trial ensued and the Respondent was examined and partly cross-examined on 31.01.2018. Subsequently, on 06.07.2022, the Petitioner’s right to further cross-examine was closed, and on 07.09.2022, his statement under Section 313 Cr.P.C. was recorded. On 22.02.2023, the Petitioner’s application under Section 311 Cr.P.C. to recall the Respondent for cross-examination was dismissed by the Trial Court with costs of ₹5,000.

5. The Petitioner, aggrieved by the dismissal, asserts that cross-examination of the complainant is crucial for a fair trial and is a legal right.

6. Heard and perused the case file.

7. The impugned order dated 22.02.2023 is essentially premised on the reasoning that the accused was given several opportunities to cross-examine the complainant but deliberately delayed proceedings under the pretext of settlement and other grounds. The application under Section 311 Cr.P.C. was filed belatedly after change of counsel, which the trial court held would amount to abuse of process if allowed, as trials cannot be endlessly reopened. Accordingly, the application was dismissed with costs of ₹5,000 payable to the complainant.

8. Learned counsel for the Petitioner argues, inter alia, that the impugned order denies the Petitioner his legal right to cross-examine the complainant, a fundamental part of fair trial. The delay was neither deliberate nor intentional; the Petitioner only seeks a fair opportunity to cross-examine.



Between 25.05.2018 and 22.04.2022, no effective hearings took place, which the trial court failed to consider. Moreover, the Petitioner suffers from serious medical issues (brain clot), preventing regular court appearance.

9. Having heard thus, I am of the view that the petition deserves to be allowed both on humanitarian (given the ill health of petitioner, some unintended delays are likely) as well as legal grounds. Section 311 Cr.P.C. is couched in the widest terms, empowering the court at any stage of inquiry, trial, or other proceeding to summon, recall, or re-examine any person if their evidence appears essential for a just decision. The guiding test is whether the evidence is “essential to the just decision of the case”.

10. The right of cross-examination is a fundamental component of a fair trial and denial thereof amounts to breach of natural justice. Even where delay or change of counsel is alleged, the learned trial court ought to have balanced speedy trial with fairness, ensuring at least one more effective opportunity for cross-examination, subject, of course to costs.

11. In the premise, subject to payment of costs of ₹5,000 (as already imposed by the Trial Court) to the complainant, the Petitioner shall be given one effective hearing to cross-examine the complainant. The Trial Court may, however, exercise discretion to adjourn depending on its workload.

12. Accordingly, the impugned order is quashed/modified to the aforesaid extent.

13. The petition is disposed of, as above.

ARUN MONGA, J

SEPTEMBER 10, 2025/acm