



2025:DHC:3773



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 13.05.2025**
+ CRL.M.C. 3276/2025
BHUSHAN SHARMA

.....Petitioner
Through: Mr. Keshav Sehgal, Mr.
Mayank Maini, Mr. Biman
Sethi and Mr. Ankit Verma,
Adv.

versus

KAILASHPATI POLYPLAST PVT. LTD.

.....Respondent
Through: Mr. Sourabh Gupta, Mr. Puneet
Yadav and Ms. Priya Mittal,
Adv.

66

+ CRL.M.C. 3277/2025
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+ CRL.M.C. 3278/2025



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68

+ CRL.M.C. 3279/2025
BHUSHAN SHARMA

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versus

KAILASHPATI POLYPLAST PVT LTD

.....Respondent

Through: Mr. Sourabh Gupta, Mr. Puneet Yadav and Ms. Priya Mittal, Adv.

69

+ CRL.M.C. 3280/2025
BHUSHAN SHARMA

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Through: Mr. Keshav Sehgal, Mr. Mayank Maini, Mr. Biman Sethi and Mr. Ankit Verma, Adv.



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versus

KAILASHPATI POLYPLAST PVT. LTD.

.....Respondent

Through: Mr. Sourabh Gupta, Mr. Puneet
Yadav and Ms. Priya Mittal,
Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

CRL.M.A. 14438/2025 in CRL.M.C. 3276/2025

CRL.M.A. 14440/2025 in CRL.M.C. 3277/2025

CRL.M.A. 14442/2025 in CRL.M.C. 3278/2025

CRL.M.A. 14444/2025 in CRL.M.C. 3279/2025

CRL.M.A. 14446/2025 in CRL.M.C. 3280/2025

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 3276/2025, CRL.M.A. 14439/2025

CRL.M.C. 3277/2025, CRL.M.A. 14441/2025

CRL.M.C. 3278/2025, CRL.M.A. 14443/2025

CRL.M.C. 3279/2025, CRL.M.A. 14445/2025

CRL.M.C. 3280/2025, CRL.M.A. 14447/2025

3. The present petitions have been filed by the Petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking to set aside the Impugned Order dated 22.04.2025 passed by the learned Judicial-Magistrate-First-Class-04 (NI Act), New Delhi District, Patiala House Court, New Delhi (Trial Court) in Complaint Cases bearing No. 5808/2019, 5807/2019, 5809/2019, 5810/2019 and



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5811/2019, all titled as “***Kailashpati Polyplast Pvt. Ltd. vs Raghav Industries***”, whereby, the learned Trial Court was pleased to allow the application of the Respondent/Complainant under Section 311 of the Code of Criminal Procedure, 1973,(Cr.P.C.) for recalling of Complainant’s Witness.

4. As the facts of the aforesaid petitions are similar in nature, these are accordingly being dealt with together *vide* this common judgment.

5. The present proceedings stem from the complaints instituted by the Petitioner under Section 138 of the Negotiable Act, 1881 in respect of the five cheques-in-question bearing no. 11871 dated 27.02.2019, no. 11870 dated 12.02.2019, no. 11874 dated 27.02.2019, no. 11872 dated 27.02.2019 and no. 11873 dated 27.02.2019, each drawn for a sum of Rs. 5,00,000/-, issued by the Petitioner in favour of the Respondent/Complainant for partial discharge of his legal liability in lieu of the products supplied by the Respondent.

6. Thereafter, on presentation, the said cheques-in-question were dishonoured. Subsequent thereto, the statutory demand notices dated 07.03.2019 were issued by the Respondent which the Petitioner failed to comply with, thus, the complaints under Section 138 NI Act were instituted before the learned Trial Court.

7. Upon service of summons, the Petitioner entered the appearance and invoked Section 145(2) NI Act, claiming that the cheques-in-question were issued as security and misused by the Respondent, however, a notice under Section 251 Cr.P.C was framed against the Petitioner, who pleaded not guilty and claimed trial. The Respondent



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led evidence by examining its Authorized Representative (CW-1) and closed evidence without examining the remaining two witnesses on 15.05.2024. The statement of the Petitioner under Section 313 Cr.P.C. was recorded, he was examined as DW-1 and duly cross-examined.

8. Consequently, while the matter was listed for final arguments, the Respondent moved an application under Section 311 Cr.P.C. seeking to summon a postal official (CW-3) to prove service of legal notice, which was disputed by the Petitioner. The learned Trial Court allowed the said application *vide* the Impugned Order, fixing 15.05.2025 for further evidence, resulting in filing of the present petitions.

9. Mr. Keshav Sehgal, the learned counsel for the Petitioner submits that the learned Trial Court has erred in allowing the application filed by the Respondent, under Section 311 Cr.P.C., as the Respondent had initially named the concerned postal official (CW-3) in the list of witnesses, however, chose not to examine him and voluntarily closed its evidence on 15.05.2024.

10. He further submits that the said application filed nearly a year later and at the stage of final arguments, fails to disclose any cogent or compelling reason for summoning CW-3, at this stage. Thus, such reopening of evidence at this advanced stage gravely prejudices the case of the Petitioner and causes delay in the disposal of the case which undermines the principles of fairness and due process.

11. Refuting the pleas raised on behalf of the Petitioner, Mr. Saurav Gupta, the learned counsel for the Respondent submits that the



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witness sought to be summoned is directly relevant to the key issue involved in the present matter, i.e., whether the statutory legal notice under Section 138 of the NI Act was duly served upon the Petitioner or not. He further submits that the contradictions in the cross examination of the Petitioner and his statement recorded under Section 313 Cr.P.C, wherein he had stated that one of the addresses upon which the legal notices were served upon him was correct, whereas in his cross examination, he deposed that both the addresses upon which the Respondent had tried to serve the legal notices are incorrect addresses.

12. The learned counsel submits that the legal notice was served at the correct addresses of the Petitioner, thus, to substantiate the said claim, it is necessary to summon the witness (CW-3) from the postal department. Moreover, he submits, no prejudice would be caused to the Petitioner as he shall have sufficient opportunity to cross examine the witness to be summoned by the Respondent. To the contrary, he submits, if an opportunity is denied to the Respondent to produce such relevant evidence would result in grave injustice to the Respondent.

13. He further submits that if any delay caused, would affect the complaint case of the Respondent and would not, in any manner, prejudice the rights of the Petitioner.

14. Having heard the learned counsels for the parties and upon perusal of the record and the Impugned Order, it is to be noted that the primary object of Section 311 Cr.P.C is to enable the Court to arrive at truth and in case, the testimony of a witness is necessary for arriving



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at a just and proper disposal of the case, the power of the Court under Section 311 Cr.P.C could be exercised. The main purpose is to subserve the cause of justice and public interest.

15. In this regard, it would be apposite to note the observations made by the Supreme Court in case of **Rajaram Prasad Yadav vs. State of Bihar**, 2013 (3) JCC 2179, wherein it is held as under:

“17.4. The exercise of power under Section 311 CrPC 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.”

16. In the present case, the primary concern of the Petitioner is that by examining a witness under Section 311 Cr.P.C would cause delay in the trial, however, he has not raised any doubt with respect to the relevancy of the witness to be examined by the Respondent. The Respondent has pleaded that the Petitioner had admitted one of his addresses mentioned on the legal demand notices to be his correct address, however, during his cross examination, the Petitioner has denied both the addresses mentioned on legal demand notices. Thus, in these circumstances, the concerned official from the postal department (CW-3) is a material witness, who could prove the correct address/addresses of the Petitioner and would be a relevant witness to unravel the truth. There is a merit in the submission made on behalf of the Respondent that the Petitioner shall have sufficient opportunity to cross examine the said summoned witness from the postal department, therefore, no prejudice shall be caused to his defence.

17. Insofar as the argument raised on behalf of the Petitioner that



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the summoning of the witness may cause delay in the trial, it is to be noted that the learned Trial Court has fixed the next date of hearing on 15.05.2025 for recording of the evidence of the aforementioned witness.

18. In view of the above, this Court does not find any merit in the submissions made on behalf of the Petitioner seeking to set aside the Impugned Order. In case the concerned witness from the postal department if already not been summoned for examination on 15.05.2025, the same be summoned by the learned Trial Court for the next date of hearing, to be fixed for examination of the said witness and to make an endeavour to expedite the recording of the statement of the witness.

19. It is made clear that the parties shall be afforded only one opportunity for examination-in-chief and cross examination of the said witness on the date, when the witness from the postal department shall appear before the learned Trial Court.

20. Consequently, with the above observations, the present petitions stand disposed of. No Orders as to cost.

SHALINDER KAUR, J

MAY 13, 2025/SU/KP

[Click here to check corrigendum, if any](#)