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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7811/2025, CRL.M.A. 32720/2025 & CRL.M.A.
32721/2025

SHARMA WELDING STORE & ORS.Petitioners

Through: Mr. Paras Sharma, Adv.
versus

FORTUNE WELDRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL
JUDGMENT
% **06.11.2025**

AJAY DIGPAUL, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") is preferred by the petitioners/accused, seeking interference of this Court in relation to CT Case No. 8902/2017 titled "*Fortune Weld vs Sharma Welding Store & Ors.*" pending before the Court of learned Judicial Magistrate First Class (NI Act), Central District, Tis Hazari Courts, Delhi (hereinafter "learned MM/Trial Court").

2. This Court notes that CC No. 8902/2017 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "NI Act") was instituted on 30.09.2014 before the learned MM by the complainant/respondent "Fortune Weld" against the petitioners. The complainant asserts supply of welding material under invoices aggregating to approximately Rs.19,83,091/- and alleges that only Rs.10,53,283/- was received. Three cheques bearing nos. 732185

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(Rs.3,62,261/- dated 22.07.2014), 732188 (Rs.3,32,241/- dated 23.07.2014) and 732187 (Rs.1,80,626/- dated 24.07.2014), drawn on State Bank of Patiala, Wazirpur Industrial Estate, New Delhi, were presented and allegedly returned with the reason "Exceeds Arrangement". Legal demand notice is stated to have been issued on 21.08.2014. Formal complaint under Section 138 of the NI Act was filed and in compliance of the summoning order, the accused appeared.

3. On 11.12.2017, notice under Section 251 of the CrPC was framed and the accused pleaded not guilty. On 23.05.2018, an application filed by the petitioners under Section 145(2) of the NI Act for cross-examination of the complainant was allowed.

4. On 05.09.2018, the right of cross-examination stood closed and CW-1 was discharged. It is stated that directions were again issued on 20.09.2021 and 02.02.2022 that CW-1 be physically present for cross-examination. On 25.03.2023, right of the accused to cross-examine CW-1 again stood closed. On 21.01.2025, it was recorded by the learned Trial Court that the petitioners are waiving their right to defence evidence and the matter was fixed for final arguments.

5. Thereafter, on 23.04.2025, the accused filed an application under Section 311 of the CrPC for recall of complainant (CW-1) for cross-examination. The same was dismissed by the learned MM vide order dated 06.06.2025. Criminal Revision No. 365/2025 preferred by the accused before the learned ASJ against order dated 06.06.2025 was dismissed on 21.08.2025 on the grounds that the order dated 06.06.2025 is an interlocutory order and thus, revision against the same was not maintainable. The learned ASJ dismissed the said



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revision petition on merits as well, thereby, upholding the decision of the learned MM. Thus, the present petition.

6. Mr. Paras Sharma, learned counsel for the petitioners submit that the trial before the learned MM is at the stage of final arguments on 07.11.2025, however the complainant has never been cross-examined even once. It is submitted that the petitioners filed an application under Section 145(2) of the NI Act on 23.05.2018 seeking permission to cross-examine CW-1 and the same was allowed. The petitioners submit that the matter was listed for cross-examination on multiple dates including 05.09.2018, 20.09.2021 and 02.02.2022 but cross-examination could not be conducted. The petitioners aver that during 2020–2022 several dates fell during Covid-19 period when virtual hearings were functioning and the complainant's physical presence could not be secured.

7. It is submitted that petitioners' previous counsel was undergoing major heart surgery and treatment, which caused prolonged non-appearance and inability to conduct defence including cross-examination. It is also argued that the petitioners were not aware of the counsel's condition and they relied upon counsel's guidance in good faith.

8. It is submitted that the right to cross-examine CW-1 was closed on various occasions and subsequently on 21.01.2025, statement of closing defence evidence was recorded and the matter was fixed for final arguments.

9. It is submitted that thereafter the petitioners filed an application under Section 311 of the CrPC on 23.04.2025 before the learned MM seeking opportunity for recall of CW-1 which was dismissed on 06.06.2025 by the learned MM. It is further submitted that Criminal

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Revision No. 365/2025 filed thereafter, challenging the order dated 06.06.2025, was also dismissed on 21.08.2025 by the learned ASJ.

10. The petitioners further submit that denial of opportunity to cross-examine the complainant strikes at the root of fair trial under Article 21, and that the present prayer is *bona fide*, limited, and only for recall of CW-1 for its effective cross-examination. It is urged that Section 311 of the CrPC empowers the Court to recall a witness at any stage if it is essential to arrive at a just decision and late stage is not an absolute bar.

11. Heard the learned counsel for the petitioners and perused the material available on record.

12. In the considered view of this Court, the entire grievance which is sought to be projected by way of the present petition is nothing but an attempt to re-agitate the very same grounds which have already been urged before the learned MM and then again before the learned ASJ.

13. Both the Courts below have concurrently returned a finding that more than adequate, repeated, and even last and final opportunities, were granted to the accused to cross-examine CW-1 and yet the cross-examination did not take place. The record speaks for itself.

14. The petitioners' own version of events shows that the permission under Section 145(2) of the NI Act was obtained on 23.05.2018, and from then till 25.03.2023, which is a period of seven years, the petitioners failed to complete even one effective cross-examination of CW-1. Fourteen effective opportunities stand recorded in the learned MM's order dated 06.06.2025. That is a fact emerging from judicial record and not a matter of inference and goes on to show the petitioners conduct. Delay, laxity and non-diligent conduct of the



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litigant also injures the complainant's rights and the justice system. Further, recall of witness at a stage when evidence is already closed is not a matter of right and the Court must guard against recall being used as a dilatory tactic.

15. The petitioners now put a substantial part of their case on the alleged medical condition of their previous counsel. As noted earlier in this order's factual matrix, this part is only a averment of the petitioners. Neither the learned MM in the order dated 06.06.2025 nor the learned ASJ in the order dated 21.08.2025 has recorded this as an accepted fact. Mere assertion of a ground in a petition is not equivalent to judicial recognition of such ground.

16. In *Neha Begum & Ors. v. State of Assam & Anr.*, SLP (Crl.) No. 3910/2024, Order dated 02.09.2024, the Hon'ble Supreme Court has held that recall cannot be permitted on the ground of some vague averments. The present factual scenario falls squarely within that principle and this Court is of the view that the grounds urged before this Court are an attempt to undo consequences of the party's own failure to act diligently, which cannot be permitted.

17. Moreover, as regards to the specific averment made by the petitioners *qua* their earlier counsel, this Court relies on the judgment of the Hon'ble Supreme Court passed in *State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402. In the said judgment, it was held that a litigant cannot seek recall only because he is now dissatisfied with how his counsel conducted the defence. The Hon'ble Court clarified that recall must be justified on the touchstone of essentiality for a just decision, and not on the basis of regret for the conduct of the defence. The Hon'ble Supreme Court accordingly held that the plea



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that former counsel did not perform effectively cannot, by itself, constitute a ground to re-open closed stages of evidence.

18. Insofar the present matter is concerned, the trial here is pending since 2014. Both the Courts below have recorded that the case is at final arguments stage. No miscarriage of justice can be said to arise merely because the accused now wishes to revisit an evidentiary stage which is not permissible due to continuous default, and finally closed. On the contrary, it seems like the petitioners are resorting to dilatory tactics by resorting to filing of such miscellaneous applications, thereby, causing delay in the trial.

19. Moreover, the learned MM has returned a finding that nothing in the application filed under Section 311 of the CrPC demonstrated such essentiality. The learned ASJ has concurred. The concurrent exercise of discretion cannot be substituted by this Court merely because the petitioners now seek a different outcome.

20. The petitioners also argue Covid-19 disruption. It is settled that Covid-19 period led to procedural adjustments, but litigants were required to act within the system which existed. The dates furnished by the petitioners themselves show that opportunities existed before and after Covid period as well. Further, when the matter was listed for defence evidence, the petitioners chose to waive of the same on 21.01.2025. Thus, the plea that they later realized the complainant was never cross-examined is not persuasive.

21. Two Courts have concurrently declined to re-open evidence. There is no perversity, no patent illegality and no demonstrable failure of justice. The learned Trial Court's approach is consistent with jurisprudence that recall at the fag end must be the exception and not the norm. Interference under such circumstances will amount to



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converting discretion into a matter of entitlement, which is contrary to settled law.

22. It is also not in dispute that the petitioners had already exercised the statutory remedy of revision against the order dated 06.06.2025 passed by the learned MM, by filing Criminal Revision Petition bearing No. 365/2025 before the learned ASJ. The learned Revisional Court vide order dated 21.08.2025, rejected the said revision not only on the ground of maintainability, but also on merits. On maintainability, it was held that the impugned order dated 06.06.2025, refusing recall of a witness under Section 311 of the CrPC was an interlocutory order, and therefore the exercise of revisional jurisdiction stood barred by Section 397(2) of the CrPC / Section 438(2) of the BNSS. On merits, the learned ASJ recorded a clear finding that the petitioners had availed multiple opportunities across several years and failed to cross-examine CW-1 and, therefore, no case for re-opening of evidence was made out.

23. After the aforesaid concurrent rejection by the first Revisional Court, the petitioners have chosen to invoke the inherent jurisdiction of this Court under Section 528 of the BNSS (corresponding to Section 482 of the CrPC). This clearly amounts to seeking a second revisional adjudication, disguised as a miscellaneous petition. Such a course of action is impermissible. Section 397(3) CrPC (*pari materia* Section 438(3) of the BNSS) expressly bars a second revision petition.

24. A litigant cannot be permitted to do indirectly what is expressly barred directly. The jurisprudential foundation of this bar stands settled which speaks that inherent powers cannot be used merely because another statutory remedy has been exhausted or is not available, and that inherent powers are not meant to create an alternate



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revisional forum. In ***Krishnan v. Krishnaveni***, (1997) 4 SCC 241, the Hon'ble Supreme Court held that where a revision has already been filed and decided by the Sessions Court, a further petition before the High Court cannot be entertained under Section 482 CrPC to circumvent the embargo contained in Section 397(3) of the CrPC and to avoid multiplicity of proceedings unless there has been failure of justice such as illegality in the order, which is not the case in the instant matter due to the reasons discussed in the preceding paragraphs.

25. In view of this legal position, once the petitioners have exhausted the remedy of revision before the learned ASJ, and the same stands dismissed on 21.08.2025, a second challenge on the same grounds, even if camouflaged under Section 528 of the BNSS / Section 482 of the CrPC, is barred. The bar under Section 397(3) of the CrPC / Section 438(3) of the BNSS is substantive and cannot be side-stepped by changing the nomenclature of the petition. In effect therefore, the present petition is nothing but a second revision in the garb of a miscellaneous petition, which is not maintainable in law.

26. Hence, on the totality of the record, this Court finds no ground to exercise its inherent jurisdiction due to the reason that the present petition is disguised as a second revision petition which is impermissible in the eyes of law and also having regard to the conduct of the petitioners across several years which does not warrant any indulgence.

27. Accordingly, the instant petition stands dismissed. Pending application(s), if any, stands disposed of.



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28. Nothing mentioned hereinabove shall tantamount to expressions of this Court on the merits of the case before the learned Trial Court.

AJAY DIGPAUL, J.

NOVEMBER 6, 2025

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