

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1966 OF 2025

Amreeta Rao Singh

..Petitioner

Versus

Harinandan Rambalidar Gupta & Anr.

...Respondents

Ms. Sharvari Joshi, for the Petitioner.

Mr. S J Khera, for the Respondent No. 1.

Smt. R S Tendulkar, APP for Respondent-State.

CORAM: N. J. JAMADAR, J.

DATE : 12th FEBRUARY 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 10th March, 2025, passed by the learned Judicial Magistrate, First Class, Dadar whereby an application preferred by the petitioner-Accused No. 3 to recall the complainant and his witnesses for cross-examination, came to be rejected.
3. The Petitioner – Accused No. 3 is arraigned as a Director of Vetmaya Healthcare Private Limited (Accused No. 01), of which the Accused No. 2, who is the husband of the petitioner, is stated to be the Managing Director. The accused are facing prosecution for an offence punishable under Section 138 r/w Section 141 of the Negotiable Instruments Act, 1881. From the

perusal of the impugned order and the Roznama of the proceedings, it becomes evident that, the complainant filed an affidavit in lieu of examination-in-chief along with the documents, and, on 29th November, 2023, further examination-in-chief of the complainant was recorded. Since an application for exemption was filed on behalf of the accused, the learned Magistrate granted exemption for the day.

4. On the next scheduled date i.e. 30th January, 2024, none appeared for the accused and, hence, no cross order was passed. The second witness for the complainant was examined on 20th April, 2024. On that day as well, the accused did not appear, and the learned Magistrate passed no cross order.

5. The witness Nos. 3 and 4 for the complainant were examined on 30th May, 2024. Mr. Brijesh Gupta, who appeared for the accused, declined to cross-examine complainant's witness Nos. 3 and 4.

6. Since the evidence of the complainant and his witnesses has gone untraversed, the learned Magistrate dispensed with the examination of the accused under Section 313 of the Code of Criminal Procedure, 1973, and directed issuance of non-bailable warrant against the accused. Thereafter, the accused preferred an application to recall the complainant and his witnesses for

cross-examination. By the impugned order, the learned Magistrate rejected the application ascribing reasons.

7. Ms. Joshi, the learned Counsel for the petitioner submitted that, the petitioner/Accused No. 3 has a good defence to her prosecution for an offence punishable under Section 138 r/w Section 141 of the N. I. Act, 1881. The accused deserves an opportunity to effectively defend herself. It was further submitted that, Mr. Gupta was not appointed by the petitioner to defend her. Therefore, the petitioner cannot be bound down by the statement made on behalf of the accused that, the accused did not wish to cross-examine PW Nos. 3 and 4. If the petitioner is not permitted to cross-examine the complainant and his witnesses, the petitioner would suffer grave prejudice.

8. In opposition to this, Mr. Khera, the learned Counsel for the complainant-respondent No. 1, strongly opposed the prayer for recall of the complainant and his witnesses. It was submitted that, since the filing of the complaint, the accused never appeared before the Trial court. Moreover, the petitioner has taken a false ground that, Advocate Gupta was not appointed. There are documents which indicate that, Adv. Gupta duly represented the accused, including the petitioner, before the Trial Court. It was further urged that, no material

has been placed on record either in the form of the affidavit of the said Advocate or otherwise to show that he was not authorized to appear for the accused before the Trial Court. Since the petitioner has approached this Court with a false assertion that, she has not appointed Adv. Gupta, the prayer for recall of the complainant and the witnesses, for cross-examination deserves to be summarily rejected.

9. Mr. Khera placed reliance on an order dated 19th January 2026 passed by a learned Single Judge of this Court in the case of *Rahul Sambhu Kabade Vs. Subhashsingh Surajsingh Thakur* in Civil Application No. 4334 of 2016 in First Appeal (St) No. 15872 of 2016, to buttress the submission that, a party cannot be permitted to get away from a situation by simply blaming an Advocate.

10. I have perused the material on record. The submission on behalf of the petitioner that, Advocate Gupta was not appointed to represent the petitioner, does not appear to be borne out by the material on record. As Adv. Gupta did appear for the petitioner on 30th May, 2024 and on prior dates as well, the petitioner cannot be now permitted to disown the said Advocate and urge that, she had not instructed Mr. Gupta not to cross-examine PW 3 and 4. Therefore, so far as PW Nos. 3 and 4, who

are the bank officials, the prayer to recall them for cross-examination, does not merit countenance.

11. So far as the prayer to recall PW Nos. 1 and 2 for cross-examination, this Court finds that, on 30th January, 2024, when no cross order was passed, none appeared for the accused. It is true, the conduct of the accused before the Trial Court does indicate that, there was due diligence on the part of the accused. However, the reason ascribed for failure to appear before the Court and cross-examine the complainant and his witness, especially from the point of view of the Petitioner, deserves to be carefully examined. It was, inter alia, asserted that, on account of the marital dispute between the Petitioner and her husband, she had decided to reside separately from the accused No.2. In the instant Petition also, it is averred that the Petitioner and her husband have filed proceedings for the dissolution of marriage by mutual consent. The Petitioner is evidently sought to be roped in by invoking the provisions contained in Section 141 of the Negotiable Instruments Act, 1881.

12. In view of the situation in life which the Petitioner finds herself and the nature of indictment against the Petitioner, the Petitioner deserves an opportunity to demonstrate that the

Petitioner cannot be roped in by invoking the principle of constructive criminality contained in Section 141 of the Act, 1881. The cross-examination of a witness is the most effective instrument of eliciting the truth.

13. At this juncture, the nature of the power vested in a criminal Court under Section 311 of the Code of Criminal Procedure, 1973, deserves to be kept in view. The observations of the Supreme Court in the case of **Natasha Singh V/s. Central Bureau of Investigation (State)**¹ are instructive, and, hence, extracted below :

“15. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be

¹ (2013) 5 SCC 741

received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. 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 great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant

of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.....”

14. The true test for the exercise of the power under Section 311 of the Code, is whether it appears to the Court that the evidence of the person who is sought to be recalled is essential to the just decision of the case. In the case of **Manju Devi V/s. State of Rajasthan**², the Supreme Court noted that the application under Section 311 of the Code, cannot be rejected on the sole ground that the case has been pending for an inordinate amount of time. The Supreme Court observed that “the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the

2 (2019) 6 SCC 203

age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness.”

15. Applying the aforesaid principles to the facts of the case at hand, in the considered view of this Court, the recall of the complainant and PW2 for the purpose of cross-examination appears essential for a just decision of the case. Thus, to advance the cause of substantive justice, this Court considers it appropriate to recall the complainant (PW1) and PW2 for cross-examination, so that the matter can be decided on merits, and, in a just manner. The inconvenience and delay caused to the complainant can be addressed by awarding costs.

16. Hence, the following order:-

:: O R D E R ::

- (i) The petition stands partly allowed.
- (ii) The impugned order stands quashed and set aside to the extent of recall of PW Nos. 1 and 2 only for the purpose of cross-examination.
- (iii) The PW 1 and 2 are recalled for cross-examination, subject to following conditions:-
 - a) The petitioner – Accused No. 3 shall pay costs of Rs. 25,000/- (Rupees Twenty Five

Thousand) to the complainant No. 2 – Respondent No.1, within a period of two weeks from the date of uploading of this order.

b) The petitioner shall cross-examine the complainant and PW 2 on the next scheduled date i.e. 20th March, 2026, without fail.

c) The petitioner shall not seek any adjournment for the purpose of cross-examination of PW Nos. 1 and 2.

d) If, for any unavoidable reason, the cross-examination cannot be completed on 20th March, 2026, the petitioner – Accused No. 3 shall complete the cross-examination on the next adjourned date.

e) The petitioner shall regularly appear before the Trial Court and shall not seek any adjournment in the Trial.

(iv) The Writ Petition stands disposed.

[N. J. JAMADAR, J.]