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

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CRM-M-25466-2026 (O&M)

Date of decision: 06.05.2026

Pista Devi**...Petitioner****Versus****Kushal Pal****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Saksham Mahajan, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of the order dated 24.03.2026 (Annexure P-9), passed by the Court of learned Judicial Magistrate First Class, Gurugram in Complaint bearing No. NACT/52332/2019, titled as ***Kushal Pal v. Pista Devi***, filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*), whereby an application filed by the respondent/complainant him under Section 348 of BNSS (*which is pari materia with Section 311 of Cr.P.C.*) had been allowed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent under Section 138 of the N. I. Act alleging that the petitioner had taken a friendly loan of ₹8,50,000 in January 2016 and, in discharge thereof, issued two cheques dated 16.09.2019 for ₹4,00,000 and ₹4,50,000 respectively. The said cheques were dishonoured on 24.09.2019 with the

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remark “signatures differ from specimen.” Legal notice was issued to the petitioner calling upon him to make the payment of the cheque amounts but he failed to do so, thereby compelling the respondent/complainant to file the aforementioned complaint.

3. After recording pre-summoning evidence, the learned trial Court issued notice of accusation to the petitioner, who, in her plea of defence, denied the signatures on the cheques as well as any liability. The complainant examined himself as CW-1 and was duly cross-examined, whereafter his evidence was closed. The petitioner thereafter commenced her defence evidence. Subsequently, at the stage when the defence evidence had already begun, the respondent/complainant moved an application under Section 348 of BNSS seeking recall of himself as a witness to produce additional documents, i.e. a bank passbook and an alleged compromise dated 21.02.2019. The petitioner opposed the application on the ground that no such documents were earlier pleaded or produced and that the application was an attempt to fill lacunae in the complainant’s case. After hearing arguments of both the parties, the learned Trial Court, vide impugned order dated 24.03.2026, allowed the said application and permitted the complainant to lead additional evidence. The impugned order reads as follows:

“The present application has been moved on behalf of the complainant seeking permission to recall CW-1 (the complainant himself) for the purpose of tendering certain documents which, according to the complainant, could not be produced earlier on account of inadvertence on the part of his previous counsel, Late Sh. Arun Singh.

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2. It is the case of the complainant that the said documents, namely:

(i) original passbook reflecting a transaction of Rs. 6,65,000/-; and

(ii) a compromise deed dated 21.02.2019, are material for the just adjudication of the case and were already in existence prior to the filing of the complaint, but were not brought on record at the appropriate stage due to bona fide reasons.

3. Per contra, learned counsel for the accused has opposed the application on the ground that the same is an attempt to fill lacunae in the complainant's case, that the documents sought to be introduced are beyond pleadings, and that the application has been moved at a belated stage with an ulterior motive to delay the proceedings. It is further contended that the documents are false and fabricated and that the complainant has taken contradictory stands.

4. I have heard the rival submissions and perused the record.

5. The scope of Section 311 Cr.P.C. is wide and empowers the Court to summon or recall any witness at any stage of the proceedings if such evidence appears to be essential for the just decision of the case. The underlying object of the provision is to ensure that the truth is brought before the Court and that justice is not defeated on account of any inadvertent omission.

6. At the same time, it is equally settled that the said provision cannot be invoked to fill up lacunae in the prosecution/complainant's case or to cause prejudice to the opposite party by permitting a party to improve its case after having realized its weaknesses.

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7. In the present case, the documents sought to be introduced are stated to be: >a bank passbook reflecting a financial transaction, and >a compromise deed allegedly forming the basis of issuance of the cheques in question.

8. A perusal of the record reveals that the complainant, during his cross-examination, has made reference to the existence of such documents. Thus, the existence of these documents cannot be said to be entirely foreign to the record. Further, the documents in question, if proved in accordance with law, may have a material bearing on the nature of transaction between the parties and the existence of liability, which goes to the root of the matter.

9. The explanation furnished by the complainant regarding non-production of these documents at an earlier stage, though not entirely free from doubt, cannot be outrightly discarded at this stage, particularly when the endeavour of the Court is to arrive at the truth and render a just decision. The objections raised by the accused regarding the genuineness, admissibility, and evidentiary value of the documents are matters which can be tested during cross-examination and at the stage of final appreciation of evidence, and do not, by themselves, constitute a ground to shut out relevant evidence altogether.

10. However, it is equally necessary to ensure that no prejudice is caused to the accused and that the proceedings are not unduly prolonged.

11. In view of the aforesaid discussion, the present application is allowed. The complainant is permitted to recall himself as CW-1 for the limited purpose of exhibiting the aforesaid documents. The accused shall be afforded full opportunity to cross-examine the witness on the said documents. The complainant shall not be

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permitted to introduce any new case beyond the scope of the complaint.

12. It is clarified that no opinion is expressed on the admissibility or evidentiary value of the documents, which shall be considered at the appropriate stage. Application stands disposed of accordingly.”

4. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law. The respondent/complainant led his entire evidence and was duly cross-examined, after which his evidence stood closed and the defence evidence had already commenced. At that advanced stage, the complainant moved an application under Section 348 of BNSS seeking to recall himself to produce a bank passbook and an alleged compromise dated 21.02.2019, without any explanation for their earlier non-production. The said application was nothing but an afterthought to fill glaring lacunae exposed during cross-examination. It is pointed out that through this application, the complainant is attempting to completely shift his stand from a case based on a friendly loan to one based on an alleged compromise, which was never pleaded earlier, which is impermissible in law. It is thus submitted that permitting recall of the complainant at this stage would seriously prejudice the petitioner, amount to abuse of the process of Court and allow the complainant to improve and alter the very foundation of his case. Hence, it is urged that the petition deserves to be allowed and the impugned order deserves to be set aside.

5. This Court has heard the submissions made by learned counsel for the petitioner.

6. It is well settled that the power, under Section 348 of BNSS (which

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corresponds to Section 311 of Cr.P.C.) can be exercised by the court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 of Cr.P.C.

7. In ***Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of the Code as under:-

“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

8. In ***Mannan Sk. and others Versus State of West Bengal and another 2014 (13) SCC 59***, Hon'ble Apex Court had allowed the application filed under Section 311 Cr.P.C. and the witness was recalled and

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re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

9. On applying the above discussed position of law to the peculiar facts of the present case, this Court finds that the learned trial Court has exercised its discretion within the well-recognized parameters governing the scope of Section 348 of BNSS (*pari materia to Section 311 Cr.P.C.*). The power to recall a witness is intended to enable the Court to arrive at the truth and to render a just decision and the same cannot be curtailed merely on the ground that the application has been moved at a later stage, so long as the evidence sought to be produced has a bearing on the core issues involved in the case. In the present case, the documents sought to be brought on record, i.e. the bank passbook and the alleged compromise deed, relate directly to the nature of the transaction between the parties and the existence of legally enforceable liability, which forms the very substratum of proceedings under Section 138 of the N.I. Act. The trial Court has rightly noticed that reference to such documents had already surfaced during the cross-examination of the complainant and, therefore, their existence cannot be said to be wholly alien to the record. Merely because the complainant seeks to place on record additional material at a subsequent stage would not *ipso facto* lead to the conclusion that the same is an attempt to fill lacunae, particularly when the Court finds that such evidence may assist in arriving at the truth. The judgments cited above clearly emphasize that procedural technicalities should not come in the way of a just adjudication and that even delayed evidence may be permitted if it advances the cause of justice.

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10. This Court also cannot lose sight of the fact that the learned trial Court has adequately safeguarded the rights of the petitioner by granting full opportunity to cross-examine the complainant on the additional documents and by specifically restricting the scope of recall so as to prevent introduction of an altogether new case. The apprehension of prejudice, thus, stands sufficiently addressed. In view of the above, no illegality, perversity or jurisdictional error can be said to have been committed by the learned trial Court while passing the impugned order. The present petition, being devoid of merit, is accordingly dismissed.

06.05.2026
Waseem R. Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>