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

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Rajvinder Singh

...Petitioner

V/s

Amarjeet Bama

...Respondent

Date of decision: 27.01.2026**Date of Uploading : 27.01.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Karanbir Singh, Advocate for the petitioner.

None for the respondent.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed seeking quashing of the order dated 26.11.2025 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Ludhiana whereby the application filed by the petitioner (herein) - accused, under Section 348 of BNSS, 2023 seeking recall and further cross-examination of CW-1, was dismissed

2. Learned counsel for the petitioner has iterated that the Court below has erred in dismissing the application filed under Section 348 of BNSS, seeking recall and further cross-examination of CW-1. Learned counsel has further iterated that the complainant is the sole material witness and denial of further cross-examination has caused serious prejudice to the defence. Learned counsel has argued that the cross-examination was closed without recording any finding of willful default on the part of the accused-petitioner which has resulted in grave miscarriage of justice. According to

learned counsel, the impugned order is *ex facie* unsustainable in law, being



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based on mere presumptions and conjectures. It has been further iterated that denial of further cross-examination has resulted in grave prejudice to the defence and that recall was necessary for a just decision of the case. It has been further contended by learned counsel that the impugned order is cryptic and devoid of merit and thus, deserves to be set-aside. On the strength of aforesaid submissions, the grant of *petition in hand* is entreated for.

3. Office note indicates that service has been effected upon the respondent. However, none has caused appearance on his behalf.

4. I have heard learned counsel for the petitioner and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.



(v) *A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.*

(vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*

(II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guide-lines as every case is sui generis in terms of factual conspectus.*

(III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

6. As per pleadings of the present case; the petitioner is facing trail under Section 138 of Negotiable Instruments Act, 1881 pending before the learned Judicial Magistrate First Class, Ludhiana. During the course of trial, the complainant appeared as CW-1 and his examination-in-chief was concluded. On 05.05.2025, the cross-examination of CW-1 was conducted by the learned counsel for the accused-petitioner. Thereafter, on 26.05.2025, the complainant failed to produce certain documents relevant for his cross-examination, as a result of which the matter was adjourned to 10.07.2025, subject to payment of Rs.200/- as costs by the complainant to the accused. On 30.07.2025, the complainant appeared and the cross-examination of CW-1 was again conducted in part by the learned counsel appearing for the accused. The matter was thereafter adjourned to 29.09.2025 for further cross-examination of CW-1. On 29.09.2025, despite the matter being fixed for cross-examination and the presence of the complainant, the accused-petitioner has failed to avail the opportunity. Consequently, the Court

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Subsequently, the petitioner moved an application under Section 348 of the BNSS, 2023 seeking recall and further cross-examination of CW-1 alleging that the complainant was willfully delaying the proceedings and that effective cross-examination could not be concluded. The Court below, after considering the record and the zimni orders, dismissed the said application vide impugned order.

7. The factual conspectus of the matter in hand reflects that the cross-examination of CW-1 was conducted in part on more than one occasion and the same was not concluded. The order treating the opportunity as Nil does not record any categorical finding that the accused was intentionally delaying the proceedings or abusing the process of law. Though the proceedings under Section 138 of Negotiable Instruments Act are required to conclude expeditiously but the same cannot be achieved at the costs of fairness. In the present case, the complainant is the sole material witness and his cross-examination had already commenced and was conducted in part on more than one occasion. Once the process of cross examination has begun, the Court must exercise greater caution before foreclosing the right of the accused to complete the same unless there is clear and deliberate misuse of the process. In the instant case, this Court does not find from the impugned order any categorical finding that the accused intentionally or willfully avoided cross-examination or that his conduct is contumacious in nature

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, this Court deems it appropriate to grant one effective opportunity to the petitioner to recall and cross-examine

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CW-1-complainant. Accordingly, the present petition is allowed and the impugned order dated 26.11.2025 passed by Judicial Magistrate Ist Class, Ludhiana is quashed & the trial Court is directed to afford one clear effective opportunity to petitioner to cross-examine CW-1. This shall, however, be subject to payment of Rs.10,000/- as costs to be paid to the Punjab and Haryana High Court Bar Association Account No.65035682434, State Bank of India, High Court Branch, IFSC Code SBIN0050306. The payment of costs shall be a condition precedent, to cross-examine CW-1 (complainant) as directed hereinabove.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Court below shall proceed further, in accordance with law, without being influenced therefrom.

10. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 27, 2026

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No