| SL. No. | Date | Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures | COURT'S OR JUDGE'S ORDERS |
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| | | | **C528/2437/2026**<br><br>Abdul Hak<br>--Applicant<br>**Versus**<br>Anwar Khan<br>--Respondent<br><br>**Hon'ble Alok Mahra, J.**<br><br>Mr. Shariq Khurshid, Advocate for the applicant.<br><br>2. This Criminal Miscellaneous Application has been filed by the applicant challenging the order dated 02.07.2026 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar, in Criminal Case No.319 of 2020, whereby the application moved by the applicant, seeking permission to adduce additional defence evidence, has been rejected.<br><br>3. Facts of the case, in brief, are that the respondent instituted a complaint against the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. According to the applicant, during the course of trial, on 10.04.2026, his previous counsel made an endorsement on the order sheet stating that the applicant did not wish to adduce any further defence evidence. On the basis of the said endorsement, learned trial Court closed the opportunity of the applicant to lead further defence evidence. It is the case of the applicant that the aforesaid endorsement was made by his previous counsel without obtaining instructions from him. Subsequently, the applicant changed his counsel and engaged a new counsel, who moved an application dated 19.06.2026 before the learned trial Court seeking permission to adduce defence evidence. However, learned Additional Chief Judicial Magistrate, Kashipur, vide order dated 02.07.2026, rejected the said application. Hence, the present application.<br><br>4. Learned counsel for the applicant submits that learned Court below has failed to appreciate that the opportunity to adduce defence evidence was closed on 10.04.2026 merely on the basis of an endorsement made by the previous counsel, without obtaining specific instructions from the applicant. He further submits that the applicant was neither aware of the said endorsement nor apprised of its legal consequences and, therefore, had never voluntarily or consciously waived his valuable right to lead defence evidence. It is also submitted that the applicant is an illiterate person, having no legal knowledge, |

and was entirely dependent upon his counsel for conducting the proceedings. Learned counsel contends that the learned Court below has adopted an unduly technical approach while rejecting the application and has failed to exercise its jurisdiction in a manner consistent with the fundamental requirement of a fair trial. It is further contended that where the Court considers the examination of a witness or production of any evidence essential for the just adjudication of the case, such power ought to be exercised in the interest of justice. On these grounds, learned counsel submits that the impugned order is liable to be set aside and the applicant deserves an opportunity to adduce defence evidence.

5. Per contra, learned State Counsel opposes the application and submits that the learned trial Court has committed no illegality or jurisdictional error in passing the impugned order. It is submitted that the applicant was duly represented by his counsel during the trial and the endorsement dated 10.04.2026 was made on his behalf, pursuant to which the opportunity to lead further defence evidence was closed. It is further submitted that a subsequent change of counsel, by itself, cannot furnish a valid ground for reopening the evidence, particularly when no sufficient or cogent explanation has been furnished for not adducing the proposed evidence at the appropriate stage of the proceedings. It is, therefore, contended that the present application is devoid of merit and is liable to be dismissed.

6. Heard learned counsel for the parties and perused the record. It is not disputed that on 10.04.2026, the previous counsel appearing on behalf of the applicant made an endorsement before the learned trial Court indicating that the applicant did not wish to adduce any further defence evidence. Acting upon the said endorsement, learned trial Court closed the opportunity to lead further defence evidence. The applicant has not disputed the fact that he was represented by his counsel at the relevant stage; rather, his principal grievance is that the endorsement was made by his previous counsel without obtaining his specific instructions.

7. This Court is of the view that a mere change of counsel or a subsequent assertion that the previous counsel had acted without proper instructions cannot, in itself, constitute a sufficient ground for reopening the evidence. An endorsement made by the counsel appearing for a party in the course of judicial proceedings cannot be lightly disregarded merely because the party subsequently changes its counsel or takes a different stand. If such a course is permitted without there being any cogent and convincing material to substantiate the allegation, it would adversely affect the orderly conduct of judicial proceedings and may also result in unnecessary delay in the disposal of cases.

8. It is also significant to note that the applicant has not demonstrated before this Court as to what specific defence evidence he now intends to produce, how the same is relevant to the controversy involved in the complaint, and in what manner such evidence is essential for the just

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| | | | adjudication of the case. A general assertion that the applicant ought to be afforded another opportunity to adduce defence evidence would not, by itself, justify exercise of the discretionary power. The applicant was required to disclose sufficient particulars of the proposed evidence so as to enable the Court to assess its relevance and necessity. This Court is, therefore, of the considered view that the learned trial Court has rightly exercised its discretion in rejecting the application moved by the applicant.<br><br>9. In view of the foregoing discussion, this Court finds no illegality, infirmity or perversity in the impugned order dated 02.07.2026 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar, warranting interference by this Court.<br><br>10. Accordingly, the present Criminal Miscellaneous Application is dismissed.<br><br>**(Alok Mahra, J.)**<br>02.11.2026<br><br>*Arpan*<br><br>ARPAN JAISWAL<br>Digitally signed by ARPAN JAISWAL<br>DN: c=IN, o=HIGH COURT OF UTTARAKHAND, ou=HIGH COURT OF UTTARAKHAND, 2.5.4.20=ee8b69c3895e419371c66c2394d4d01654451e3a26ddd7b73913989f9fe40ba3e, postalCode=263001, st=UTTARAKHAND, serialNumber=5A5FC17502BE4E3D521D2ABD9D4E4C5109CB9B7E4635184DFD4AADAA2C3CEA68, cn=ARPAN JAISWAL<br>Date: 2026.11.02 19:16:45 +05'30' |