



\$~90

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2249/2026 & CRL.M.A. 9204-05/2026

KAMINI SHARMA

.....Petitioner

Through: Mr. S.H. Ansari, Advocate.

versus

GEETA MALIK

.....Respondent

Through: Ms. Hiteshi Kakkar, Mr. Amrit Singh Khalsa, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

27.03.2026

1. The present petition has been preferred assailing the order dated 15.11.2025 passed by the learned Magistrate in Ct. Cases. No. 8005/2017, whereby the petitioner's application seeking recall of two witnesses of the respondent/complainant for the purpose of further cross-examination was declined, as well as the order dated 24.12.2025 passed by the learned Sessions Court, by which the revision petition against the said order, being Crl. (Rev) No. 467/2025, came to be dismissed.

2. The proceedings before the learned Magistrate arose out of a complaint instituted by the respondent against the present petitioner in the year 2017 under Section 138 of the Negotiable Instruments Act, 1881 ["NI Act"]. In the course of the proceedings, the respondent/complainant examined two witnesses, namely, herself as CW-1 and Ms. Shweta Sachdeva as CW-2. Both the witnesses tendered their respective



affidavits in evidence and were duly cross-examined on behalf of the petitioner. The cross-examination of CW-1 and CW-2 was conducted on 24.03.2021 and 10.11.2022, respectively. Upon conclusion of the complainant's evidence, the petitioner also led defence evidence before the learned Magistrate.

3. At the stage of final arguments, after the evidence on behalf of both sides had been concluded, the petitioner filed an application dated 17.07.2025 under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], seeking recall of the complainant's witnesses for the purpose of further cross-examination. The material averments made in the said application are as follows:

"3. That thereafter the accused /applicant discussed his entire case with the new counsel and when the new counsels went through the file and after going through the details of the entire case file it came to know that there are so many lapses while conducting the proceedings by the previous counsel. It also revealed that the CW-1/complainant Geeta Malik and CW-2 Sheweta Sachdeva have not been properly and thoroughly examined on the material facts nor any relevant suggestion could be put forward in this regard, which will lead towards the miscarriage of justice, and in case the said witnesses CW-1 and CW-2 are not further cross examined, the proper and effective adjudication of the case can not be done justifiedly because the question on promissory note, Rs 7,50,000/- and Rs3,50,000/-, nor questioned about of the mode of payment nor the income of the complainant nor the status of the accused in the eye of complainant nor the income and source of the accused to repay if such heavy amount is taken, nor the purpose of needs and requirements of the such heavy amount of Rs. 11,00,000/- etc, etc which can be seen by this Hon'ble court from the cross examinations of the witnesses as CW-1 & CW-2 as relevant questions have not been asked from the witnesses in order to bring the true and real facts before this Hon'ble court as the witnesses are very closed to each other and they in collusion with each other want to extract money in the guise of this present complaint case which is the abuse and misuse of process of law. The complainant is alleging that she had given a loan of Rs, 11,00,000/- but why, she did not file case in respect of balance amount of Rs. 3,50,000/- nor she has filed any civil case in respect of Rs.



11,00,000/- except the present case under the provision of negotiable instrument act for the cheque amount of Rs 7,50,000/-. **Several questions and queries are- required from the complainant and her witness for fair, reasonable, just and effective adjudication as well as decision of the case in the interest of justice.**

4. That the CW-1 was cross examined on 24.03.2021 and the CW-2 was cross examined on 10.11.2022 **In the cross examination of the CW-1 and CW-2, many material questions were not asked and some of the material suggestions were not put to them which is necessary for the proper, effective and just adjudication of the present matter in the interest of justice.**

5. That the accused/applicant further wants to cross examine of the witnesses CW-1 and CW-2 to bring the actual and real facts before this Hon'ble Court for fair, reasonable and just decision the matter pending before this Hon'ble Court. It is the humble submission of the applicant /accused that unless the witnesses CW-1 and CW-2 are further cross examined, the accused/applicant will gravely prejudice.”¹

4. The application was opposed by the complainant/respondent and came to be dismissed by the learned Magistrate vide order dated 15.11.2025. In the said order, the learned Magistrate observed that an application under Section 348 of BNSS can be allowed only where the examination or recall of witnesses is essential for a just decision of the case, and not where it is sought merely to fill up lacunae in the case of the applicant or to prejudice the opposite party. The learned Magistrate also distinguished the judgments of this Court relied upon by the petitioner and, in that context, observed as follows:

“8. The application of the accused has been read carefully in the light of the facts arising from the evidences on record, and it is being considered in contrast of the flow the current trial has taken. The judgments relied upon by the ld. counsel for the accused have been perused. The judgment namely Sandeep Mehta v. Rakesh Arora pertains to a factual matrix where the application u/s 311 was allowed to bring on record documents that were inadvertently not placed on record and the judgment namely Sandeep Singh v. Ranjana Gawri

¹ Emphasis supplied.



pertains to a factual matrix where the application u/s 311 was allowed when the accused could not get a fair opportunity to cross-examine the complainant because the CE was dispensed with and accused never got an opportunity to bring his version on record. Both of the judgments cited by the accused do not relate to the factual matrix or the circumstances of the trial in the present complaint, and hence, as such they will not strengthen the case of the accused.

9. The accused in her application u/s 311 Cr.P.C has taken a ground that CW-1 and CW-2 “have not been properly and thoroughly examined” and has further laid down the points on which the examination of complainant could have treaded. This court believes that the accused has been given a fair opportunity to cross-examine the complainant once, which has been duly exercised by her. The perusal of the application does not disclose any new development that have occurred since the last time CB was led. A considerable period of time has passed and the accused has participated in the trial throughout without raising any objection to the cross-examination of complainant. The current application has been filed with the engagement of the new counsel and the application has failed to chart out the instances which entitles the accused of one more opportunity to cross-examine the complainant.

10. Furthermore, without delving into the detailed particulars or merits, the point of enquiries mentioned by the accused in her application have also been touched upon by the earlier counsel for the accused during the cross-examination of the complainant/CW-1 and CW-2. Hence, the above-mentioned ground taken by the accused, if accepted, will amount to ordering a re-trial in a case which has run its due course. Such an opportunity will give the accused an unfair advantage, over the case of the complainant, to fill in the lacuna (if any) that may have been left on the earlier occasions, and will also cause delay in the trial that is at the ultimate stage of final arguments.”

5. It may be noted that the petitioner thereafter approached the learned Sessions Court by way of a revision petition; however, the same was held to be not maintainable by order dated 24.12.2025.

6. Having heard Mr. S.H. Ansari, learned counsel for the petitioner, and Ms. Hiteshi Kakkar, learned counsel for the respondent, who appears on advance notice, I find no ground to interfere with the view taken by the learned Magistrate. It is not a case where the petitioner was denied an



opportunity to cross-examine the witnesses; rather, the witnesses were duly cross-examined during the period 2021-2022. The application under Section 348 of BNSS was filed much thereafter, after the petitioner had also led evidence. The sole ground urged in the application is that the petitioner has engaged new counsel, who has advised that there were certain lapses in the earlier conduct of cross-examination and the proceedings. I am of the view that this ground is wholly insufficient to warrant recall of witnesses, particularly at the advanced stage of the proceedings. Permitting such a course solely on account of a change of counsel and a subsequent dissatisfaction with the manner in which the case was earlier conducted, would open the door for litigants to unduly delay the conclusion of proceedings by engaging new counsel.

7. The aforesaid position stands affirmed by the Supreme Court in *State (NCT of Delhi) v. Shiv Kumar Yadav*², wherein it was observed as follows:

*“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. **While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system.** The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination.*

² (2016) 2 SCC 402.



16. The interest of justice may suffer if the counsel conducting the trial is physically or mentally unfit on account of any disability. The interest of the society is paramount and instead of trials being conducted again on account of unfitness of the counsel, reform may appear to be necessary so that such a situation does not arise. Perhaps time has come to review the Advocates Act and the relevant rules to examine the continued fitness of an advocate to conduct a criminal trial on account of advanced age or other mental or physical infirmity, to avoid grievance that an Advocate who conducted trial was unfit or incompetent. This is an aspect which needs to be looked into by the authorities concerned including the Law Commission and the Bar Council of India.

XXX

XXX

XXX

27. Certainly recall could be permitted if essential for the just decision but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. **Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial.** Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”³

A co-ordinate Bench of this Court has also reiterated the same position in *Vimal Ghai v. M.P. Sharma*⁴, observing as follows:

“16. The newly engaged counsel steps into the shoes of previous counsel and cannot agitate that more questions were required to be put to the witnesses. Merely because the new counsel has been engaged, same would not confer any right to the petitioner to seek recall of complainant/respondent for cross-examination, failing which, there would be chaos and every new counsel engaged by

³ Emphasis supplied.

⁴ 2026 SCC OnLine Del 14.



the concerned party would file an application for recall of witnesses on that ground which would result in unnecessary delay in disposal of the case. This Court in CRL.M.C 6451/2025, titled, “Govind Mandalv. State of NCT of Delhi” held that power under Section 311 Cr. P.C. cannot be exercised merely on account of the reason of change in counsel. The relevant paragraph of said order reads as under:—

“15 Moreover, the power under Section 311 of the CrPC cannot be exercised at such a belated stage merely on account of change in counsel. Different opinion of a subsequent counsel on how the case is to prosecuted cannot be a legal ground for recalling a witness. If such arguments are allowed, the trial would be a never-ending endeavour since after every few months, a new lawyer with a different strategy would be engaged, who would like to cross examine the witnesses again.”⁵

8. In fact, in the present case, as noted by the learned Magistrate, the aspects sought to be revisited by the petitioner in the application had already been addressed during the cross-examination of the witnesses, in the manner considered appropriate by the then counsel for the petitioner.

9. Mr. Ansari has relied upon the judgment of the Supreme Court in *Rameshwar Dayal and Ors. v. State of Uttar Pradesh*⁶ and the judgment of a coordinate Bench of this Court in *Sandeep Mehta v. Rakesh Arora*⁷ and *Sandeep Singh v. Ranjana Gawri*⁸, all of which deal with the scope of powers exercisable under Section 311 of the Code of Criminal Procedure, 1973 [“CrPC”].

10. The decision in *Rameshwar Dayal* arose in a context where the High Court had itself examined the learned Sessions Judge during the course of an appeal and taken fresh evidence on record; in those circumstances, the Supreme Court held that the parties ought, at the very

⁵ Emphasis supplied.

⁶ (1978) 2 SCC 518 [hereinafter, “*Rameshwar Dayal*”].

⁷ 2021 SCC OnLine Del 5362 [hereinafter, “*Sandeep Mehta*”].

⁸ 2019 SCC OnLine Del 10337 [hereinafter, “*Sandeep Singh*”].



least, to have been afforded an opportunity to rebut such evidence. The facts of the present case bear no similarity to the aforesaid situation.

11. In *Sandeep Mehta*, as noted by the learned Magistrate, certain documents had inadvertently not been placed on record, and an opportunity was accordingly granted to place the same on record. Similarly, in *Sandeep Singh*, the complainant had not led any evidence whatsoever. The facts of the present case are clearly distinguishable from those in the aforesaid judgments relied upon by the petitioner.

12. For the aforesaid reasons, I find no ground to entertain the present petition. The petition, alongwith pending applications, is accordingly dismissed.

PRATEEK JALAN, J

MARCH 27, 2026

“Bhupi”/SD/