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

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Pronounced on: 05.01.2026+ CRL.M.C. 4782/2024
SH. VIMAL GHAI

.....Petitioner

Through: Mr. Satish Kumar, Mr. Ravi
Kumar, Advs.

versus

SH. M. P. SHARMA

.....Respondent

Through: Mr. Shubham Gupta, Adv.

CORAM:-**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is a petition under Section 482 Cr.P.C, seeking to set aside the impugned order dated 10.05.2024, passed by the learned Principal District and Sessions Judge in Criminal Revision Petition bearing No. 142/2024, with prayer to allow the petitioner's application under Section 311 Cr.P.C for re-examination of the respondent/ complainant.

FACTUAL MATRIX

2. Respondent/complainant filed a complaint under Section 138/142 Negotiable Instruments Act ["NI Act"], with allegations that cheque issued by the petitioner towards discharge of his liability was dishonoured with remarks, "Payment stopped by Drawer", vide



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cheque return memo dated 30.06.2020. Petitioner did not make payment despite demand notice dated 28.07.2020.

3. Petitioner was summoned by the trial Court and at present, the matter is at the stage of defence evidence.

4. Petitioner filed an application under Section 311 Cr.P.C for recall of complainant/respondent for re-examination. Such application came to be dismissed by the trial Court vide order dated 05.03.2024. Feeling aggrieved, petitioner preferred a criminal revision before the learned Principal District and Sessions Judge vide Criminal Revision Petition bearing No. 142/2024, titled, "Vimal Ghai vs State". However, the revision was dismissed vide impugned order dated 10.05.2024. It is this order which has been challenged before this Court.

SUBMISSIONS ON BEHALF OF PETITIONER

5. Learned counsel appearing on behalf of petitioner has submitted that petitioner has paid back the loan amount in installments against valid receipts duly signed by the complainant/respondent, but respondent has made false statement that receipts DW-1, DW-2 and DW-3 do not bear his signatures.

6. It is further submitted that previous counsel of the petitioner did not properly cross-examine the complainant/respondent inasmuch as the material questions in respect of aforesaid were not asked to complainant/respondent. The true facts of transactions between the petitioner and the complainant/respondent have not been brought



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before the trial Court, which are vital and are required for just decision of the case.

7. It has been submitted that the aforesaid lapse was discovered after the present counsel was engaged and immediately, thereafter, an application under Section 311 Cr.P.C was filed for recall of complainant/respondent for cross-examination.

8. It is argued that petitioner cannot be allowed to suffer because of lapse of previous counsel. It is submitted that with a view to curtail the delay, petitioner has no objection if the trial is ordered to be continued on day to day basis.

SUBMISSIONS ON BEHALF OF RESPONDENT

9. Per contra, learned counsel appearing for complainant/respondent has submitted that complainant/respondent was cross-examined by the petitioner way back in the year 2022/2023 on three different occasions, namely, 03.12.2022, 22.12.2022 and 07.03.2023. The application for recall was filed after a long gap, in the year 2024 i.e. after a gap of two years from the date when the complainant/respondent was first cross-examined. It is argued that granting permission to the petitioner to cross-examine the complainant/respondent would amount to filling up the lacunas. It is submitted that petitioner has just been adopting the delaying tactics under the garb of Section 311 Cr.P.C application, and therefore, petition is liable to be dismissed.



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ANALYSIS AND CONCLUSION

10. The Court has considered the submissions made by learned counsels, and have perused the material on record.

11. Section 311 Cr.P.C lays down the procedure for summoning or recall of any witness at any stage of the trial which can be permitted in order to prevent the failure of justice. Undisputedly, the Court has wide power under Section 311 Cr.P.C to summon any person as a witness and recall for evidence at any stage of the trial, if it is felt that the same is required for just decision of the case. However, such power cannot be exercised in a routine manner and has to be exercised judiciously. The Apex Court in its judgments in **Vijay Kumar Vs. State of U.P.** (2011) 8 SCC 136, **State (NCT of Delhi Vs. Shiv Kumar Yadav** (2016) 2 SCC 402 and **Ratanlal Vs. Prahlad Jat** (2017) 9 SCC 340, has held that the recall of witness is not a matter of course and power under Section 311 of the Code has to be exercised judiciously, with caution and circumspection and not arbitrarily or capriciously. Such discretionary power has to be exercised on the basis of facts and circumstances of each case and has to be balanced carefully with considerations.

12. In **Manju Devi v. State of Rajasthan**, (2019) 6 SCC 203, this Court emphasized that discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in **Swapan Kumar**



Chatterjee v. Central Bureau of Investigation, (2019) 14 SCC 328 as under:

‘10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.’

13. The trial Court, while dismissing the application of the petitioner recorded that cross-examination of the complainant/respondent was conducted on three specific dates by the same counsel



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i.e. 03.12.2022, 22.12.2022 and 07.03.2023 and even the examination-in-chief of the petitioner/accused was conducted by the same counsel. The order further records that petitioner has engaged multiple counsels since then.

14. The impugned order dated 10.05.2024, records that enough opportunities have been granted to the petitioner to cross-examine the complainant/respondent by the trial Court, so much so even the petitioner has been cross-examined. He could have put his case in defence and has no reason except the change of counsel.

15. Perusal of orders passed by the trial Court and the revisionist Court clearly reflect that the complainant/respondent evidence was closed way back and application under Section 311 Cr.P.C was filed much later. The only justification that the petitioner has is that the previous counsel did not put the material questions during cross-examination of complainant/respondent.

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 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 Mandal vs. 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.”

17. There is no gainsaying that fair trial is a part of Article 21 of the Constitution of India. The Hon’ble Supreme Court in the case of **State (NCT of Delhi Vs. Shiv Kumar Yadav** (2016) 2 SCC 402, held that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The Hon’ble Court held that 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 is 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 re-trial must follow on every change of counsel, can have serious consequences on conduct of trials and criminal justice system. If the witnesses are to be re-called again and again and are required to repeatedly appear in Court to face cross-examination, it can result in undue hardship, which is not permissible. Mere observation that recall was necessary “for ensuring fair trial” is



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not enough unless there are tangible reasons to show how the fair trial suffered without recall.

18. As is apparent from the record, complainant/respondent was cross-examined elaborately on three dates. The petitioner had ample opportunities to put forth the necessary questions as is being sought now. There was nothing which prevented him from putting those questions. Merely because of the change of counsel and based upon his opinion that such questions were relevant, witnesses/complainant cannot be recalled for purpose of cross-examination.

19. In these circumstances, the Court is of the opinion that power under Section 311 Cr.P.C cannot be allowed to be misused by the petitioner to derail the proceedings or to cause inconvenience to the other party as the same would cause miscarriage of justice and cause prejudice to the respondent.

20. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order. The petition is devoid of any merit and is, therefore, dismissed.

RAVINDER DUDEJA, J.

January 05, 2026/vd