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

\# **CNR No. DLHC010476062026**

\+ **CRL.M.C. 7422/2026 & CRL.M.A. 31030/2026, CRL.M.A. 31031/2026, CRL.M.A. 31032/2026**

VICKY BHATIA .....Petitioner

Through: Mr. Sanyam Jain, Adv.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Digam Singh Dagar, APP

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

O R D E R

% 01.10.2026

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), seeking setting aside of the orders dated 23.12.2025 and 16.02.2026 passed by the learned JMFC (NI Act)-08, South-West District, Dwarka Courts, New Delhi, whereby the right of the petitioner/accused to further cross-examine CW-1/complainant and to lead defence evidence was closed, and the subsequent application filed under Section 311 Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C'). seeking recall of the complainant was dismissed.

3. Respondent No. 2 instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'),

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alleging dishonour of cheque bearing No. 930157 dated 15.07.2021 for a sum of ₹1,40,000/-, purportedly issued by the petitioner towards repayment of a friendly loan of the same amount. The cheque was dishonoured with the remarks "Funds Insufficient" vide return memo dated 09.09.2021, following which a legal demand notice dated 01.12.2021 was issued to the petitioner.

4. The petitioner disputes the alleged liability of ₹1,40,000/- and asserts that he had borrowed only ₹28,000/- from Respondent No. 2 due to his financial difficulties. It is his case that the said amount was to be repaid in daily instalments of ₹400/- and that two blank signed cheques were obtained from him as security.

5. During the pendency of the complaint proceedings, the petitioner moved an application under Section 311 Cr.P.C., seeking recall of the complainant for further cross-examination on the ground that his previous counsel had not adequately cross-examined CW-1 on material aspects concerning the actual loan liability and the legal demand notice. The said application was allowed by the learned Trial Court vide order dated 08.10.2025, granting the petitioner a final opportunity to further cross-examine CW-1, subject to payment of costs of ₹3,000/-, with a specific direction that no further adjournment would be sought.

6. The matter was thereafter listed for further cross-examination of CW-1 on 23.12.2025. On the said date, the learned Presiding Officer was on leave, and the petitioner's counsel was stated to be out of station due to the prevailing pollution conditions. The petitioner, who was personally present before the learned Trial Court, sought a passover on the assurance that his counsel would appear through video conferencing. However, the learned Relieving Court declined the request and, noting that the proceedings were

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being conducted in hybrid mode, that no justification had been furnished for the counsel's inability to appear virtually, and that the costs imposed earlier had also not been paid, closed the petitioner's right to further cross-examine CW-1 as well as to lead defence evidence vide order dated 23.12.2025.

7. Thereafter, the petitioner moved a second application under Section 311 Cr.P.C. on 16.02.2026, seeking another opportunity to further cross-examine the complainant and to lead defence evidence. The said application was dismissed by the learned Trial Court.

8. Aggrieved by the aforesaid orders, the petitioner has approached this Court seeking restoration of his right to further cross-examine CW-1 and to lead defence evidence.

Submissions on behalf of The Petitioner:

9. Learned counsel for the petitioner submits that the petitioner has consistently disputed the alleged loan liability of ₹1,40,000/- and has maintained that the actual loan transaction was only for ₹28,000/-. It is further submitted that the petitioner had approached the police authorities with a complaint regarding the dispute and, allegedly in the subsequent police proceedings, Respondent No. 2 had admitted that the loan transaction between the parties was for ₹28,000/-. Learned counsel submits that the said circumstance assumes significance in view of the substantial difference between the amount claimed by the complainant and the amount acknowledged by the petitioner.

10. Learned counsel further submits that the previous counsel engaged by the petitioner had failed to effectively cross-examine CW-1, particularly on the actual loan liability, the source of funds and the legal demand notice. It is contended that the learned Trial Court itself had recognised the necessity

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of further cross-examination by allowing the petitioner's earlier application under Section 311 Cr.P.C. vide order dated 08.10.2025. However, on 23.12.2025, when the petitioner was personally present before the Court, his request for passover was declined despite the prevailing pollution advisory permitting appearances through video conferencing and his assurance that counsel would appear virtually. Learned counsel submits that the closure of both the right to further cross-examine the complainant and the right to lead defence evidence was harsh and disproportionate, resulting in prejudice to the petitioner and affecting his right to a fair trial.

11. Learned counsel, therefore, submits that the impugned orders deserve to be set aside and that the petitioner may be granted an opportunity to further cross-examine CW-1 and lead defence evidence, subject to such terms and costs as this Court may deem appropriate.

Findings and Analysis

12. This Court has considered the submissions advanced by learned counsel for the petitioner and perused the material placed on record.

13. It is evident from the record that the learned Trial Court, vide order dated 08.10.2025, had already granted the petitioner a final opportunity to further cross-examine CW-1, subject to payment of costs of ₹3,000/-, while specifically directing that no further adjournment would be sought. The petitioner, however, failed to comply with the condition regarding payment of costs. Further, on 23.12.2025, despite the proceedings being conducted in hybrid mode, no satisfactory justification was furnished for the inability of the petitioner's counsel to appear through video conferencing.

14. The right of an accused to a fair opportunity to defend is undoubtedly an important facet of a fair trial. At the same time, such right cannot be

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construed as conferring an unrestricted entitlement to repeated opportunities, particularly where a specific final opportunity has already been granted and the conditions imposed thereunder have not been complied with. The Court is also required to balance the right of the accused with the need to ensure that the trial proceeds in a timely manner.

15. In the present case, this Court is not inclined to interfere with the closure of the further cross-examination of CW-1. The petitioner had already availed an opportunity pursuant to the order dated 08.10.2025 and had been specifically cautioned that no further adjournment would be granted. The subsequent non-appearance of counsel, particularly when the proceedings were being conducted in hybrid mode, therefore does not warrant another opportunity for cross-examination.

16. At the same time, the petitioner has disputed the very quantum of the alleged liability, asserting that the transaction was only for ₹28,000/- as against the amount of ₹1,40,000/- alleged in the complaint. This is a material defence which the petitioner is entitled to place before the learned Trial Court in accordance with law. The question as to the actual nature and extent of the liability is a matter for adjudication on the basis of the evidence and is not required to be determined by this Court in exercise of jurisdiction under Section 528 of the BNSS.

17. In these circumstances, while no further opportunity is warranted for cross-examination of CW-1, this Court considers it appropriate, in the interest of a fair trial, to afford the petitioner one final opportunity to lead defence evidence. The said opportunity shall, however, be strictly subject to the conditions stipulated hereinbelow.

i. The petitioner shall pay costs of ₹5,000/- before the learned Trial

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Court.

ii. The petitioner shall lead his entire defence evidence on the date fixed by the learned Trial Court. No further opportunity shall be granted thereafter.

iii. In case any defence witness is not available on the date fixed for reasons beyond the control of the petitioner, the learned Trial Court may consider a request for a further date strictly on the merits and subject to such conditions as it may deem appropriate.

18. Accordingly, the petition is disposed of in the above terms. Pending applications, if any, also stand disposed of.

19. The order be uploaded on the website of this Court forthwith.

MADHU JAIN, J

OCTOBER 1, 2026/yt

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