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

\# **CNR No. DLHC010478682026**

\+ **CRL.M.C. 7457/2026, CRL.M.A. 31202/2026 & CRL.M.A. 31203/2026**

M/S ASHIRWAD & ANR. .....Petitioners

Through: Mr. Karan Sharma, Adv.

versus

M/S MAHENDRU TEX FAB .....Respondent

Through: None.

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\# **CNR No. DLHC010478692026**

\+ **CRL.M.C. 7458/2026, CRL.M.A. 31204/2026 & CRL.M.A. 31205/2026**

M/S ASHIRWAD & ANR. .....Petitioners

Through: Mr. Karan Sharma, Adv.

versus

M/S MAHENDRU TEX FAB .....Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

O R D E R

% 05.10.2026

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the petitioners under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "BNSS"), challenging the order dated 14.09.2026 passed by the Court of

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Ms. Aradhana, Ld. JMFC (NI Act)-09, Central District, Tis Hazari Courts, Delhi, in CC No. 2381/2021 titled "M/s Mahendru Tex Fab Vs. M/s Ashirwad Through Prop.", whereby the application filed by the petitioners under Section 311 Cr.P.C. seeking further cross-examination of CW-1 has been dismissed

3. Briefly stated, the proceedings arise out of a complaint instituted by the respondent under Section 138 of the Negotiable Instruments Act, 1881. As per the case set up by the respondent/complainant, certain amounts were outstanding against the petitioners in respect of supply of fabrics/goods. In support of the alleged transactions and liability, the respondent has relied upon, inter alia, tax invoices, books of account/ledger and other documents pertaining to the transactions between the parties.

4. The complaint pertains to twelve cheques bearing Nos. 016224, 016225, 016226, 016227, 016228, 016229, 016230, 016231, 016234, 016243, 016246 and 016249, issued between 10.10.2020 and 25.12.2020, for an aggregate amount of ₹1,04,17,000/-. Upon dishonour of the said cheques, the respondent instituted the complaint under Section 138 of the NI Act, which is pending before the learned Trial Court.

5. During the course of trial, CW-1, Sh. Mahender Chawla, proprietor of the respondent, tendered his evidence by way of affidavit on 22.05.2025 and relied upon various documents, including tax invoices, ledger books of account, a certificate under Section 65-B of the Indian Evidence Act, 1872, the cheque(s) in question, bank return memo(s), legal notice and postal/courier documents. On the said date, his cross-examination was deferred for want of time.

6. CW-1 was thereafter cross-examined on 11.09.2025, whereafter the

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complainant's evidence was closed. The matter subsequently proceeded to the stage of defence evidence. On 29.11.2025, the learned Trial Court granted the petitioners a last opportunity to furnish the complete list of defence witnesses along with an application under Section 315 Cr.P.C. The said opportunity was not availed and, on 15.01.2026, the defence evidence came to be closed.

7. Thereafter, an application dated 05.02.2026 seeking setting aside of the order closing defence evidence was moved on behalf of the petitioners. The said application was allowed by the learned Trial Court on 13.02.2026, subject to costs, thereby affording the petitioners a further opportunity in relation to their defence evidence.

8. Subsequently, the petitioners changed their counsel and the newly engaged counsel filed his vakalatnama on 11.07.2026. Thereafter, on 22.08.2026, an application under Section 311 Cr.P.C. was filed seeking a limited opportunity to further cross-examine CW-1. The application stated, inter alia, that further cross-examination was required in relation to the bills, receipts, invoices, delivery challans and purchase orders forming part of the transactions between the parties.

9. The learned Trial Court, vide the impugned order dated 14.09.2026, dismissed the aforesaid application. While doing so, the learned Trial Court took note of the fact that CW-1 had already been cross-examined, that there had subsequently been a change of counsel and that the complaint, pending since 2021, had already progressed to the stage of defence evidence. On the same date, the learned Trial Court granted a last opportunity to the petitioners to lead defence evidence. Aggrieved by the rejection of the prayer for further cross-examination of CW-1, the petitioners have approached this Court.

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SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Learned counsel for the petitioner submits that even assuming that CW-1 had already been cross-examined at length, the mere fact that the earlier cross-examination was lengthy could not, by itself, warrant rejection of the application under Section 311 Cr.P.C. It is submitted that specific material aspects of the complainant's case had been identified by the petitioner for further cross-examination and that such aspects were relevant for the just decision of the case.

11. It is further submitted on behalf of the Petitioner that the present proceedings, including the connected matter, involve cheques aggregating to more than Rs.1 crore and that, in the event of conviction, the Petitioner may be subjected to a fine or compensation exceeding Rs.2 crores. Such substantial financial exposure would cause grave prejudice to the Petitioner, including at the appellate stage, on account of the statutory requirement of pre-deposit in the event of conviction.

12. Learned counsel for the Petitioner submits that the Ld. The Trial Court failed to appreciate that the transaction between the parties involved multiple post-dated cheques pertaining to different periods, including cheques issued over a period of approximately two months. It is submitted that no material questions or suggestions concerning the said cheques were put to CW-1 during the earlier cross-examination. The said aspect is directly relevant to the nature of the underlying transactions and the alleged legally enforceable liability and, therefore, warrants further cross-examination .

13. Learned counsel for the Petitioner relies upon ***Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461,*** to submit that Section 311 Cr.P.C. confers wide powers upon the Court to recall and re-examine a witness where

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such evidence is essential for the just decision of the case and that the provision is intended to facilitate the ascertainment of truth and proper proof of facts. Indian Kanoon

14. Learned counsel further relies upon ***T. Nagappa v. Y.R. Muralidhar, (2008) 5 SCC 633***, to contend that in proceedings under Section 138 of the Negotiable Instruments Act, the Court ought not to assume in advance the evidentiary value of the proposed cross-examination and that the relevance of the proposed examination is to be tested through the evidence itself.

FINDINGS AND ANALYSIS

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

16. Section 311 Cr.P.C. confers wide powers upon the Court to summon or recall a witness at any stage of the trial, where such evidence is considered essential for the 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 v. State of U.P. (2011) 8 SCC 136, State (NCT of Delhi v. Shiv Kumar Yadav (2016) 2 SCC 402 and Ratanlal v. 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

17. In the present case, CW-1 tendered his evidence by way of affidavit on 22.05.2025 and was thereafter cross-examined. The complainant's evidence

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was ultimately closed on 11.09.2025. Thus, the witness had already been subjected to cross-examination and the Petitioner had an opportunity to put the material aspects of the case to CW-1. The subsequent application seeking further cross-examination of the said witness, therefore, has to be examined in the backdrop of the opportunity already availed by the Petitioner.

18. It is also relevant to note that after closure of the complainant's evidence, the learned Trial Court, on 29.11.2025, granted the Petitioner a last opportunity in relation to the defence evidence. The Petitioner failed to furnish the requisite particulars within the opportunity so granted and the defence evidence was closed. Thereafter, an order dated 15.01.2026 was passed in relation to the defence evidence, which was subsequently sought to be set aside by the previous counsel for the Petitioner. An application dated 05.02.2026 was thereafter moved in this regard, which came to be allowed by the learned Trial Court on 13.02.2026, with costs.

19. The aforesaid chronology demonstrates that the learned Trial Court had already afforded sufficient opportunity to the Petitioner and had also shown indulgence in permitting the Petitioner to pursue the defence after the closure of the defence evidence. In such circumstances, the subsequent prayer to recall CW-1 for further cross-examination cannot be considered in isolation, but has to be viewed in the context of the repeated opportunities already availed by the Petitioner during the course of the proceedings.

20. The learned Trial Court, therefore, rightly declined to permit further cross-examination of CW-1, particularly when the complainant's evidence had already been concluded after the witness had been duly cross-examined. The mere change of counsel cannot furnish a ground for reopening or prolonging the cross-examination of a witness, particularly when sufficient

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opportunity had already been afforded to the accused.

21. It is also relevant to note that the present proceedings have been pending since the year 2021 and the matter had reached the stage of defence evidence on 29.11.2025. Permitting the Petitioner, at this stage, to recall CW-1 for further cross-examination would have the effect of reopening the evidence of a witness who had already been cross-examined and discharged and would further delay the conclusion of the proceedings.

22. While the right to a fair opportunity of cross-examination is an important facet of a fair trial, the same cannot be construed as an unqualified right to repeatedly cross-examine a witness. The power under Section 311 Cr.P.C. is to be exercised where the proposed evidence is essential for the just decision of the case and not merely to provide another opportunity to a party which has already availed the opportunity of cross-examination.

23. In the facts and circumstances of the present case, this Court finds that the Petitioner has failed to demonstrate any such circumstance which would render further cross-examination of CW-1 indispensable for the just decision of the case. Permitting such further cross-examination, merely on account of a change in counsel and after the complainant's evidence had already been closed, would result in unnecessary prolongation of the proceedings and cannot be claimed as a matter of right.

24. Learned counsel for the Petitioner has relied upon ***Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 and T. Nagappa v. Y.R. Muralidhar, (2008) 5 SCC 633.*** There is no quarrel with the proposition that the power under Section 311 Cr.P.C. is wide and may be exercised where the evidence sought is essential for the just decision of the case. However, the said power is discretionary and cannot be invoked as a matter of right to afford

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a further opportunity of cross-examination, particularly where the witness has already been duly cross-examined and discharged. In the present case, the Petitioner has failed to demonstrate that further cross-examination of CW-1 is indispensable for the just decision of the case.

25. The reliance upon the aforesaid judgments, therefore, does not advance the case of the Petitioner. The complainant's evidence had already been closed and CW-1 had been cross-examined, while the proceedings had also progressed to the stage of defence evidence. The mere change of counsel or identification of certain further aspects for cross-examination cannot, in the facts of the present case, justify reopening the evidence. Permitting the same would result in further delay in proceedings which have been pending since 2021.

26. This Court, therefore, finds no perversity or illegality in the impugned order warranting interference in exercise of its jurisdiction under Section 528 of the BNSS.

27. Consequently, the present petition is dismissed. Pending application(s), if any, also stand disposed of.

28. The order be uploaded on the website forthwith.

MADHU JAIN, J

OCTOBER 5, 2026/*prg/KA*

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