



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

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Reserved on: May 13, 2026
Pronounced on: May 29, 2026

+ **CRL.M.C. 2318/2022, CRL.M.A. 9807/2022**

VE COMMERCIAL VEHICLES LTD. **...Petitioner**

Through: Mr. Manu Bajaj, Adv.

Versus

MR SUNIL KAPOOR **...Respondent**

Through: Mr. Siddharth Verma and Mr.
V.V. Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present petition under *Section 482* of the Code of Criminal Procedure, 1973¹, the petitioner/ complainant seeks setting aside of the order dated 11.03.2022² passed by the learned Metropolitan Magistrate (NI Act), Central District, Tis Hazari Courts, Delhi³ in CC No.528978/2016 whereby the application under *Section 311* CrPC made by the respondent/ accused to recall the authorised representative of the complainant⁴ for cross-examination was allowed by the learned Trial Court.

2. *Succinctly put*, the complainant and the accused entered into a Distributorship Agreement wherein the complainant supplied automobile

¹ Hereinafter '*CrPC*'

² Hereinafter '*impugned order*'

³ Hereinafter '*Trial Court*'

⁴ Hereinafter '*CW-I*'

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parts to the accused and raised Invoices, against which the accused allegedly handed over certain undated cheques to the tune of *Rs.1.25 Crore* and sought time to clear the same. However, since despite service of Demand Notice dated 18.11.2014 by the complainant upon the accused, the same were not cleared, the complainant presented the said cheques dated 17.12.2014 with its banker, which were dishonoured with the remark '*Account Closed*', leading to initiation of the complaint proceedings under *Sections 138/142* of the Negotiable Instruments Act, 1881⁵ by the complainant before the learned Trial Court wherein the impugned order has been passed.

3. Before this Court, learned counsel for the complainant primarily submitted that the impugned order is wholly unsustainable inasmuch as it is devoid of any cogent reasons, that too while allowing the application under *Section 311 CrPC* of the accused after about *three years* from the closure of his right to cross-examine **CW1** and when the matter was at the stage of final arguments. The learned counsel submitted that the only rationale provided is to the effect that cross-examination of **CW1** was '*... ..essential for a just decision... ..*' which, as per him, was insufficient, especially in view of the dilatory tactics adopted by the accused throughout the trial and the repeated adjournments sought by him. The learned counsel submitted that in fact, even after the matter was listed for final arguments *vide* order dated 22.02.2020, the accused continued to deliberately cause delay and obstruct the course of justice, to the extent that Non-Bailable Warrants were issued against him, and

⁵ Hereinafter '*NI Act*'
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subsequent thereto, even *Section 82 CrPC* proceedings had to be initiated, demonstrating his *mala fides*.

4. To buttress his submissions, learned counsel relied upon the decisions of the Hon'ble Supreme Court in *State (NCT of Delhi) vs. Shiv Kumar Yadav & Anr.*⁶ to submit that while *Section 311 CrPC* confers wide powers, and that the same must be supported by tangible reasons showing that the fairness of the trial would otherwise be compromised, as also on *Ashutosh Pathak vs. State of U.P.*⁷ to submit that any delay in filing of such an application must be satisfactorily explained. The learned counsel lastly relied upon *B. B. Lal Aggarwal vs. State (NCT of Delhi)*⁸ and *Sushil Ansal v. State (NCT of Delhi)*⁹ rendered by Co-ordinate Benches of this Court to submit that change of counsels by itself was insufficient to entitle the accused to the relief sought by him, and as such, the accused ought not have been allowed to take benefit of his own wrongs, thereby defeating the purpose of a speedy trial under the NI Act¹⁰.

5. *Per contra*, learned counsel for the accused at the outset submitted that the present petition has been filed with a delay of *six days* as also without a valid Special Power of Attorney since the same is not duly attested and authenticated. The learned counsel further submitted on merits that the impugned order is well-reasoned and has been passed for a fair trial in line

⁶ (2016) 2 SCC 402

⁷ 2025 SCC OnLine SC 1341

⁸ 2022 SCC OnLine Del 998

⁹ 2021 SCC OnLine Del 4388

¹⁰ *Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116 CRL.M.C. 2318/2022*



with the objectives of *Section 311 CrPC*, which confers wide powers that ought to be exercised when refusal thereof would result in miscarriage of justice.

6. Learned counsel then relying upon the judgements rendered by the Hon'ble Supreme Court in *Manju Devi vs. State of Rajasthan*¹¹, *Natasha Singh vs. CBI*¹² and *Rajaram Prasad Yadav vs. State of Bihar*¹³ in support thereof submitted that after due consideration of the relevant factors including the reasons urged by the accused, and especially since the liability of the accused had been disputed by him right from the outset, the learned Trial Court rightly granted one final and time-bound opportunity to the accused only to cross-examine CW1 that too while imposing costs to balance the equities, in order to arrive at a just decision. As such, he submitted that the impugned order ought not to be interfered with.

7. This Court has heard learned counsels for the parties and carefully perused the pleadings and materials on record along with the judgements cited at Bar.

8. The *moot issue* herein revolves around the exercise of powers under *Section 311 CrPC* undertaken by the learned Trial Court in the facts and circumstances involved.

¹¹ (2019) 6 SCC 203

¹² (2013) 5 SCC 741

¹³ (2013) 14 SCC 461



9. It is plain and clear that *Section 311 CrPC*¹⁴ confers wide discretion upon the Courts to be exercised ‘... ..at any stage of any inquiry, trial or other proceeding... ..’, and which, in fact, ‘...shall...’ be exercised if it appears ‘... ..essential to the just decision of the case.’ Since the said position has been repeatedly held/ reiterated by the Hon’ble Supreme Court and this Court as well, there is hardly any scope of doubt that a just decision of the case should always be the paramount consideration for the Courts in such an application [*Rajaram Prasad Yadav (supra)*], as also that it is the duty of a Court to take every necessary and appropriate measure to keep the record straight and clear any ambiguity(s) in the evidence, as doing otherwise would prejudice the fairness of the trial [*Manju Devi (supra)*].

10. However, the above has to be juxtaposed with a note of caution against arbitrary and/ or capricious invocation of *Section 311 CrPC* [*Shiv Kumar Yadav (supra)* and *Ashutosh Pathak (supra)*] as it is to be exercised with judicious circumspection. In *Ashutosh Pathak (supra)*, the Hon’ble Supreme Court after tracing the development of the legal position through a catena of pronouncements including *Ratanlal vs. Prahlad Jat*¹⁵ and *Satbir Singh vs. State of Haryana*¹⁶, has reiterated that the discretionary authority under *Section 311 CrPC* ought to be exercised to make the ends of justice meet,

¹⁴ ‘311. Power to summon material witness, or examine person present.-Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.’

¹⁵ (2017) 9 SCC 340

¹⁶ 2023 SCC OnLine SC 1086

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when the same appears essential to find out the truth and to render a just decision, *albeit* when strong and valid reasons exist therefor.

11. In fact, the learned Trial Court, keeping in mind the aforesaid principles governing the powers under *Section 311 CrPC*, has gone onto hold as under:-

“The present matter is at the stage of final arguments, that is, the trial has still not concluded. A consistent plea of defence has been taken by the accused at the time of notice under Section 251 CLP.C. as well as at the time of his statement recorded under Section 313 CLP.C.. As per the defence raised by the accused, there is no liability to the tune of cheque amount, which runs into crores. Further, it has also been stated that certain payment (in crores) has already been made by the accused to the complainant in 2014 itself. In the considered opinion of this court, it is essential for a just decision in the present case that the accused be given an opportunity to establish his defence/ factum of repayment. The purpose of trial is to obtain the truth and to ensure that adjudication is done on merits. Even though the conduct of the accused has been negligent during the course of trial, yet in the interest of substantial justice, a party should be granted an effective opportunity to establish their case/defence. Considering the facts and circumstances of the present case, one single opportunity to cross-examine the AR of the complainant is granted to the accused subject to cost of Rs.10,000/- to be paid to the complainant on or before NDOH.”

[Emphasis supplied]

12. The above clearly reflects that while adjudicating application under *Section 311 CrPC* made by the accused, the learned Trial Court has given detailed and cogent reasons, after dealing with all the contentions raised by



the complainant herein, and balanced it by imposing costs as well. The same being well-reasoned, cannot be said to be arbitrary and/ or capricious.

13. Regarding placing reliance *B.B. Lal Aggarwal (supra)* and *Sushil Ansal (supra)* qua change of counsel, since this was neither the sole plea taken by the accused nor the sole reason behind allowing of his application, especially in view of the defence urged by him, as also there were other mitigating circumstances urged on his behalf such as the fire in his warehouse, etc., which were also duly substantiated before the learned Trial Court, the same cannot come to the rescue of the complainant herein.

14. Therefore, holistically, the learned Trial Court has well and truly exercised its discretion while passing the speaking impugned order, which, calls for no interference by this Court.

15. In view of the afore-going and finding no perversity in the impugned order, this Court sees no reason to interfere with the same.

16. Accordingly, the present petition along with the pending application is dismissed with no order as to costs.

SAURABH BANERJEE, J

MAY 29, 2026
Ab/RS