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

% *Date of Decision: 03.11.2026*

\# **CNR No. DLHC010529312026**

\+ **CRL.M.C. 8226/2026, CRL.M.A. 34499/2026 & CRL.M.A. 34500/2026**

MONIKA .....Petitioner

Through: Mr. Soumava Karmakar, Ms. Jyoti Bajaj, Mr. Daksh Sharma, Advocates

versus

USHA SHRIVASTAVA .....Respondent

Through: None

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. Petitioner/accused assails order of the learned trial magistrate, whereby in proceedings under Section 138 Negotiable Instruments Act, an application filed on behalf of petitioner under Section 348 BNSS for recall of the already cross-examined complainant (*respondent herein*) for further cross-examination was dismissed.

2. The relevant factual matrix culled out of the petition is as follows.

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Notice under Section 251 CrPC was framed on 01.04.2022, to which the petitioner/accused pleaded not guilty and the matter was posted to 24.09.2022 for complainant's evidence. The order dated 24.09.2022 has not been filed. As per record, on 01.06.2023, the complainant was chief-examined and partly cross-examined, after which further cross-examination was deferred at request of learned counsel for petitioner/accused and the matter was posted to 05.10.2023. The order dated 05.10.2023 also has not been filed. Further, as per record, on 30.09.2024 the petitioner/accused was granted another opportunity to cross-examine the complainant on 14.02.2025. On 14.02.2025, matter was adjourned on account of illness of counsel for the petitioner/accused, making it clear that on next date 22.05.2025 the petitioner/accused shall have last opportunity to conclude cross-examination of the complainant. On 22.05.2025, the complainant was further partly cross-examined till lunch time, and for further cross-examination, adjournment application was filed on behalf of petitioner/accused on the ground that he had to appear in post lunch session in Tis Hazari Courts, so the matter was adjourned to 19.07.2025. On 19.07.2025, on account of heavy board of the learned trial court, matter was posted to 14.10.2025 for further cross-examination of the complainant. On 14.10.2025, the complainant was further cross-examined till lunch time and since counsel for petitioner/accused was not available after lunch at request of learned counsel for petitioner/accused, last and final opportunity was granted to conclude cross-examination on 12.01.2026. On 12.01.2026, none

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appeared on behalf of the petitioner/accused, so the learned trial court closed further cross-examination of the complainant and posted the matter to 20.02.2026 to record statement of accused. Subsequent to that adjournment, on 12.01.2026, at 11:15am, when a proxy counsel for complainant was present, the learned trial court took up an exemption application filed on behalf of the petitioner/accused, which was allowed and exemption for that day was granted to the petitioner/accused. Thereafter, the petitioner/accused filed an application under Section 348 BNSS seeking to recall the complainant for further cross-examination. That application was dismissed by way of detailed order impugned herein.

3. At the outset, learned counsel is requested to address on maintainability of this petition in the light of bar under Section 438(2) BNSS and the scope of inherent powers of the High Court.

4. Learned counsel for petitioner/accused does not dispute that dismissal of an application under Section 348 BNSS, being an interlocutory order cannot be assailed by invoking revisional jurisdiction under Section 438 BNSS on account of bar created by Section 438(2) BNSS. It is also not disputed that what is explicitly prohibited by law, cannot be given a backdoor entry by invoking inherent powers unless it is a case of gross injustice.

5. The gross injustice in the present case, according to learned counsel for petitioner/accused, is that on 12.01.2026, the learned trial court "should

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not have closed the right to cross-examine" the complainant in the very first call as the counsel for the petitioner/accused "intended" to take a passover. There is no other submission in support of the contention that the impugned order led to gross injustice.

6. It is trite that an order dismissing an application under Section 348 BNSS (*earlier Section 311 CrPC*) is an interlocutory order and that being so, it is not amenable to scrutiny under revisional jurisdiction of the Court of Sessions or even this Court in view of bar created by Section 438(2) BNSS. It is equally trite that what is explicitly prohibited by law cannot be granted a backdoor entry by invoking inherent powers, unless it is a case of gross injustice. Reference in this regard can be made to the judgments in the cases titled ***Ram Swaroop Gupta & Ors vs State NCT of Delhi & Anr.***, 2026:DHC:514 and ***Exclusive Capital Limited vs State Govt of NCT Delhi & Ors***, 2026:DHC:6742.

7. In view of the above mentioned legal position, what is to be seen is as to whether it is a case of gross injustice meted out to the petitioner that can justify this Court to invoke inherent powers against dismissal of application under Section 348 BNSS.

8. To begin with, it is not a case where the cross-examination was completely denied to the accused. It is also not a case where the accused was directed to cross-examine the prosecution witness in the absence of any legal assistance. It is also not a case where the entire cross-examination was

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directed to be concluded in haste. As described above, the complainant was cross-examined at length on a number of dates of hearing by counsel for the petitioner/accused. It is also not a situation where the counsel for the petitioner/accused was denied any accommodation by the trial court; as mentioned above, the learned trial court repeatedly adjourned the matter on request of the defence counsel so that the petitioner/accused could get maximum possible opportunity to conclude the cross-examination. Significantly, the learned counsel for petitioner/accused is husband of the petitioner/accused.

9. So far as the default in appearance of the petitioner/accused and her counsel on 12.01.2026 is concerned, till date, there is no satisfactory explanation. Even today, what is submitted by learned counsel for petitioner/accused is that he *intended* to take passover. As repeatedly held, passovers and adjournments are matter of courtesy extended by the Court to the counsel and the same are not right of the counsel. As described above, from 01.06.2023 till 12.01.2026, the complainant/respondent remained in the witness box. On 12.01.2026, neither the petitioner/accused nor even any proxy counsel appeared before the trial court to seek passover. That being so, there was no reason for the trial court to expect that counsel for petitioner/accused would seek a passover and keep waiting further.

10. What to say of gross injustice meted out to the petitioner/accused, it appears that the petitioner/accused was trying her level best to protract the

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trial so that the respondent/complainant gets frustrated and gives up. In view of the aforesaid, I find the present petition not just devoid of merits but completely frivolous, so it is dismissed with cost of Rs. 10,000/- to be deposited within one week by the petitioner/accused online with www.bharatkeveer.gov.in. Accompanying applications also stand disposed of. Copy of this order be sent to the learned trial court.

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(JUDGE)

NOVEMBER 3, 2026/*as*

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