



2025:DHC:6545



§~54 to 57 &amp; 7

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 4th August, 2025*

+ CRL.M.C. 5131/2025, CRL.M.A. 22197/2025 (stay)

KAILASHPATI POLYPLAST PVT LTD .....Petitioner

Through: Mr. Sourabh Gupta, Mr. Puneet Yadav  
and Mr. Vasu Dev, Advocates.

versus

RAGHAV INDUSTRIES .....Respondent

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur,  
Mr. Kshitij Joshi, Mr. Aryan Kumar,  
Ms. Nandita Sharma and Ms. Rashi  
Singh, Mr. Mayank Maini and Mr.  
Ankit Verma, Advocates.

55

+ CRL.M.C. 5145/2025, CRL.M.A.22289/2025 (stay)

KAILASHPATI POLYPLAST PVT LTD .....Petitioner

Through: Mr. Sourabh Gupta, Mr. Puneet Yadav  
and Mr. Vasu Dev, Advocates.

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+ CRL.M.C. 5146/2025, CRL.M.A.22291/2025 (stay)

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Ms. Nandita Sharma and Ms. Rashi Singh, Mr. Mayank Maini and Mr. Ankit Verma, Advocates.

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+ CRL.M.C. 5173/2025, CRL.M.A. 22361/2025 (stay)

KAILASHPATI POLYPLAST PVT LTD .....Petitioner

Through: Mr. Sourabh Gupta, Mr. Puneet Yadav and Mr. Vasu Dev, Advocates.

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+ CRL.M.C. 5096/2025, CRL.M.A. 22031/2025 (stay)

KAILASHPATI POLYPLAST PVT LTD .....Petitioner

Through: Mr. Sourabh Gupta, Mr. Puneet Yadav and Mr. Vasu Dev, Advocates.

versus

RAGHAV INDUSTRIES .....Respondent

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Kshitij Joshi, Mr. Aryan Kumar, Ms. Nandita Sharma and Ms. Rashi Singh, Mr. Mayank Maini and Mr. Ankit Verma, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

**CRL.M.A. 22288/2025 (Exemption) in CRL.M.C. 5145/2025**

**CRL.M.A. 22290/2025 (Exemption) in CRL.M.C. 5146/2025**

1. Exemption allowed, subject to all just exceptions.



2. The Applications stand disposed of.

**CRL.M.C. 5131/2025, CRL.M.A. 22197/2025 (stay)**

**CRL.M.C. 5145/2025, CRL.M.A.22289/2025 (stay)**

**CRL.M.C. 5146/2025, CRL.M.A.22291/2025 (stay)**

**CRL.M.C. 5173/2025, CRL.M.A. 22361/2025 (stay)**

**CRL.M.C. 5096/2025, CRL.M.A. 22031/2025 (stay)**

3. Criminal Miscellaneous Petitions under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) have been filed on behalf of the Petitioner, to challenge the Order dated 21.07.2025 of the learned JMFC-04 (NIACT), New Delhi, in Complaint Case bearing CT Case No. 5807/2019; CT Case No. 5808/2019; CT Case No. 5809/2019; CT Case No. 5810/2019 and CT. Case No. 5811/2019 under Section 138 of the Negotiable Instruments Act, (*hereinafter referred to as 'N.I. Act'*) *vide* which his Application under Section 311 of Cr.PC, has been dismissed.

4. ***Brief facts*** are that the Complainant had filed the aforesaid five Complaints under Section 138 of N.I. Act against the Respondent, in regard to the dishonour of five cheques, for Rs.5,00,000/- each issued by the Respondent to the Petitioner/Company in discharge of its legal liability. The Respondent was summoned and thereafter, Notice under Section 251 Cr.P.C. was framed. Thereafter, respective parties had led their evidence.

5. According to the Petitioner/Complainant because of the contrary stand taken by the Respondent/Accused in his Application under Section 145(2) of N.I. Act in regard to service of Legal Notice, he was compelled to file First Application under Section 311 Cr.P.C. for placing additional documents i.e.



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Invoices and delivery receipts, etc. on record. The Respondent contested the Application and the same was dismissed by the learned Trial Court on 21.07.2023.

6. Thereafter, the Complainant led the evidence and examined CW-1, Mr. Priyank Garg (Authorised Representative of the Petitioner Company), who was duly cross-examined by the Respondent on two dates. The evidence of the Petitioner was closed on 15.05.2024. It is also stated that during the course of proceedings, two of the witnesses were dropped from the list of witnesses because the Respondent had admitted before the learned Trial Court that one of the addresses out of the two mentioned on the Notice, were correct and genuine.

7. The Statement of the Respondent was recorded under Section 313 Cr.P.C. wherein the Respondent stated that though the second address mentioned on the legal Notice of Demand is correct, but the first address as mentioned is not the complete address.

8. The Respondent thereafter, filed an Application under section 315 Cr.PC for leading defence evidence. The Respondent thus, appeared as witness in his defence as DW-1 on 04.03.2025, who was duly cross-examined by the Petitioner. In his cross-examination, he took a contradictory stand that both the alleged addresses mentioned in the Complaint, were incorrect. However, Legal Notice was duly served upon the Accused at the given address, as per the Tracking Report already placed on record. Moreover, the Respondent himself had admitted in his Statement under Section 313 Cr.PC that one of the addresses mentioned in the Complaint, was correct.



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9. In view of the contradictions in the stand taken by the Respondent, the Complainant filed his Application under Section 311 Cr.PC for calling additional witness from Indian Postal Department along with the complete postal record pertaining to the service of Legal Notice sent to the Respondent.

10. The Application was allowed by this Court *vide* Order dated 22.04.2025 and the witness was permitted to be called from the Postal Department. However, when the witness from the Postal Department appeared before the learned JMFC, he stated that the relevant record has been weeded out by the concerned Department.

11. Thereafter, the Petitioner/Complainant filed the Third Application under Section 311 Cr.P.C. for placing on record the Certificate under Section 65B of the Indian Evidence Act (*hereinafter referred to as 'IEA'*) in respect of the Tracking Report, which could not be filed at the time of filing of the Complaint, due to inadvertence. The copy of the said Certificate under Section 65B of IEA was filed along with the Application under Section 311 Cr.PC. The Reply dated 05.07.2025 to the Application under Section 311 Cr.PC was filed by the Respondent.

12. The third Application under S.311Cr.P.C. got dismissed by the learned Trial Court *vide* Order dated 21.07.2025.

13. *Aggrieved by the said Order, it has been challenged on the grounds* that the learned Trial Court has committed grave error of law, which has resulted in miscarriage of justice to the Petitioner. It is claimed that the Judgment by this Court in the case of Ram Kishan vs. Emaar MGF Construction Pvt. Ltd., (2024) SCC OnLine Delhi 4443, has been ignored



wherein it was observed that filing of the Certificate under Section 65B of IEA, is the matter of procedure and not allowing the same to be taken on record would be taking a hyper technical view, which is against the settled proposition of law.

14. Reliance has also been placed on Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal, (2020) 7 SCC wherein the Apex Court noted that the Certificate under Section 65 of IEA, can be produced at any stage if the trial is not over. Here the necessity of filing the Certificate under Section 65B of IEA has arisen because of the contradictory stand taken by the Respondent in his Statement under Section 313 Cr.P.C. and in his evidence as DW-1. It is asserted that it is not a new document, which is sought to be placed on record to fill-up the lacunae in the case; rather it is only a supporting a document (*Tracking Report*) which is already on record.

15. **Section 311 Cr.P.C.** Section (*now Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter referred to as 'B.N.S.S.'*) confers *vide* discretion on the Trial Court to summon or recall any witness or evidence at any stage, for just decision of the case. Procedural laws are handmaidens to justice and cannot be allowed to defeat substantive laws. There is no deliberate negligence on the part of the Petitioner. The omission was inadvertent, which is sought to be rectified in view of the Respondent's contradictory stand.

16. Hence, the prayer is made that the impugned Order be set-aside and the Petitioner be granted one opportunity to place on record the Certificate under Section 65B IEA along with the additional evidence Affidavit and to recall CW-1, the Authorised Representative of the Complainant Company, to



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exhibit this Certificate.

17. ***The Application is contested by the Respondent***, who has asserted that this is the Third Application under Section 311 Cr.P.C. that has been filed by the Petitioner/Complainant. The Second Application under Section 311 Cr.P.C. had been filed to examine the Postal Authorities, which had been allowed by this Court *vide* Order dated 13.05.2025. The witness from Postal Department was duly called, who stated that the relevant record has been weeded out. Even at that stage, the Petitioner neither sought the permission to place on record the Certificate under Section 65B of the IEA or for recall of CW-1, to prove the requisite Certificate.

18. The final arguments were addressed by both the parties wherein the Respondent had argued about the Notice not proved to be served through the Tracking Report as it was not supported by the Certificate under Section 65B IEA. The matter after being heard, was listed for 05.06.2025 for clarification/Judgment. It is at this stage that the present Application under Section 311 Cr.P.C. was filed by the Petitioner. It is evident that it was only intended to fill-up the lacunae in the evidence of the Complainant in the light of final arguments addressed by the Respondent. Moreover, in the original list of witnesses as well, there were these two witnesses, which were cited by the Complainant but he in his own wisdom had dropped and not chosen to be examined.

19. The stand of the Respondent was evident all throughout the trial. Even if there was a contradiction in the Statement under Section 313 Cr.P.C. and in the testimony as DW-1, it was well within the knowledge of the Complainant and there was nothing that prevented the Complainant to have moved the



Application at the earliest. The very fact that this Application has been moved after conclusion of final arguments, the Application has been filed only to fill-up the lacunae in the case of the Complainant. It is, therefore, contended that there is no infirmity in the Order of the learned JMFC and the present Petition is liable to be dismissed.

**Submissions heard and record perused.**

20. It is a well settled proposition of law that the procedures are intended to assist and aid in delivery of justice. This principle has even more relevance in criminal trials where the decisions can have ever lasting impact on the life and liberty of an Accused. It is also well settled that Section 311 Cr.P.C. is intended to bring on record the complete evidence of the parties to be able to arrive at a just and fair decision. It is also not in dispute that this Application can be filed till the pronouncement of Judgment and till then, the trial cannot be said to have been concluded.

21. The Apex Court in the case of Sukhpal Singh Khaira vs. State of Punjab, (2013) 1SCC 289 has observed in the context of Section 319 Cr.P.C. that the trial is concluded only on passing a Judgment of conviction and sentence and till then, the powers under Section 319 Cr.P.C. can be exercised.

22. Likewise, in the case of State of Karnataka vs. T. Nasseer alias Nasir & Ors., 2023 SCC OnLine SC 1447, similar facts arose wherein electronic evidence had been placed on record by the Prosecution but it was not supported with the Certificate under Section 65B IEA. The Application under Section 311 Cr.P.C. was filed by the Prosecution asserting that though the primary electronic documents were already on record, but by way of



abundant caution, sought to place the Certificate under Section 65B of the IEA, on record. These electronic documents were sent to CFSL for examination and the Report was thereafter, placed on record. The Report was sought to be proved by recording of the Statement of the Government Examiner Computer Forensic Division, CFSL, who appeared as a Prosecution witness. At this stage, an objection was taken by the Accused that the Report cannot be taken in evidence in the absence of Certificate under Section 65B of IEA. Immediately thereafter, the said Certificate was sought to be brought on record under Section 311 Cr.P.C. and also to recall the expert witness for proving the Certificate in evidence. The Apex Court made a reference to Union of India vs. Ravindra V. Desai, (2018) 16 SCC 273 wherein it was emphasised that non-production of a Certificate under Section 65B of IEA on earlier occasion, is a curable defect. The reference was also made to Arjun Panditrao Khotkar (supra) wherein it was observed that so long as the hearing in a trial is not over, the requisite Certificate can be directed to be produced at any stage so that the information contained in electronic record Form can then be admitted and relied upon in evidence.

23. Insofar as the proposition of law is concerned, it is well-settled that the Certificate under Section 65B of IEA is only a procedural requirement and that the same can be allowed to be taken till the trial is not over.

24. It may however, be noted that the provisions of Cr.P.C. are intended for benefit of both the parties and cannot be interpreted differentially for the Complainant or the Accused.

25. The present controversy of filing of the Certificate under Section 65B of IEA, has arisen in the context of a Complaint under Section 138 of the N.I.



Act, which though is essentially a dispute of civil nature but in order to enhance the efficacy of the negotiable instruments, Section 138 has been added to add criminality to dishonour of cheques on account of insufficiency of funds. It cannot be overlooked that these are Complaint cases, which are essentially between the Complainant and the Accused. In this backdrop, the facts of this case may be considered.

26. The Complainant/Petitioner in his Complaint under Section 138 of N.I. Act, had relied upon the Tracking Report to support the service of Legal Notice. Pertinently, there were two other witnesses on whom reliance had been placed by the Complainant, but he in his wisdom did not consider it necessary or expedient to examine them and the two witnesses were dropped.

27. According to the Petitioner, there was no necessity felt as the Respondent had admitted that one of the addresses mentioned in the legal Notice of Demand, was correct. Moreover, in the Statement under Section 313 Cr.PC as well, the Respondent admitted that one address was correct while the second address was incomplete. *In view of these admissions, the Complainant did not think it was necessary to prove the service of legal Notice through Tracking Report duly supported with these Certificates under Section 65B IEA.*

28. The necessity for this evidence arose when the Respondent as DW-1, denied having the receipt the Notice. The Complainant promptly moved an Application under Section 311 seeking the witness from Postal Department, to prove the Tracking Report. Pertinently, this Application got allowed by this Court *vide* Order dated 03.05.2025. At that stage also, the Petitioner was well aware of the evidence of the Respondent and their stand in regard to the



service of legal Notice. However, it confined its Application only to examination of witness from Postal Department. The Petitioner even at that stage was well aware and conscious that no Certificate under Section 65B of IEA had been filed along with the Tracking Report.

29. Significantly, the witness from Postal Department appeared and stated that the record was not available despite which no further Application was made.

30. The *final arguments* were addressed by both the parties and the Respondent vehemently challenged the service of legal Notice by taking an objection that the Tracking Report has not been proved and it is not supported by Certificate under Section 65B of IEA. It is thereafter, that the Application under Section 311 Cr.P.C. has been filed.

31. From the aforesaid, it is evident that this Application under Section 311 has been prompted only after the final arguments were addressed and the legal lacunae in the case of the Complainant, was pointed out. It is not as if the Complainant was not aware since the commencement of his Complaint that the Tracking Report was required to be supported by a Certificate under Section 65B of IEA. Pertinently, the Tracking Report has also not been proved and exhibited but is only a Marked document.

32. It is evident that this Application under Section 311 Cr.P.C. filed after the conclusion of final arguments by the Respondent, is only an endeavour to fill-up the lacunae which have been pointed out during the arguments addressed by the Respondent.

33. Though, it is well-settled that the procedures cannot be read so as to deny substantive justice between the parties or to bring on record the relevant



evidence, but at the same time, procedures cannot be invoked to work to the disadvantage of one party. In this context, it is pertinent to observe that the Complainant all throughout was conscious of the admissions made by the Respondent in regard to the service of legal Notice and had thought in its wisdom to be sufficient to prove the service of legal Notice. Significantly, the Tracking Report in respect of which the Certificate is sought to be placed, has also not been exhibited. Having so exercised his discretion to rely upon the claimed admissions of the respondent, the Complainant cannot time and again file an Application under Section 311 Cr.P.C. only to fill in the lacunae in their evidence.

34. While generally the Courts are generous in allowing the Application under Section 311 Cr.P.C., but it has to be considered in the context of facts and circumstances of each case and there can be no general thumb rule that the Application has to be allowed in every circumstance merely because a final Judgment of conviction/acquittal, has not been pronounced.

35. In the present case, the facts as detailed above clearly reflect that the Third Application under Section 311 Cr.P.C. has been prompted after the final arguments were addressed by the Respondent, only in an endeavour to fill the lacunae in the evidence of the Complainant.

36. These Criminal Petitions have no merit and are hereby dismissed and disposed of accordingly.

37. Pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**AUGUST 4, 2025/RS**