$~

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

% *Judgment delivered on: 12.08.2025*

\+ **CRL.M.C. 57/2025 & CRL.M.A. 260/2025**

PARAS NATH JHA .....Petitioner

Through: Mr. Varun Dhingra, Advocate.

versus

HARJEET SINGH .....Respondent

Through: Mr. Anil Kumar Tripathi and Mr. Mohit Sharma, Advocates.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The present petition has been filed seeking setting aside of the order dated 19.12.2024 [hereafter '*impugned order*'] passed by learned JMFC (NI Act), South-West District, Dwarka, Delhi [hereafter '*Magistrate*'] in CC. No. 46875/2018, titled "Harjeet Singh v. Paras Nath Jha", *vide* which the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] seeking the recall of the complainant (respondent herein) was dismissed.

2. Brief facts of the present case, as evident from the complaint filed in this case, are that the petitioner had borrowed a friendly cash

loan of Rs. 10,00,000/- from the respondent on 09.07.2016, owing to which he had executed a promissory note in favour of the respondent. Later, upon several persuasions by the respondent, he had issued a cheque of Rs. 10,00,000/- bearing no. 000002 dated 22.10.2018 drawn on HDFC Bank, RG Complex, Sector-9, Rohini, New Delhi, strongly assuring the respondent of the payment. However, it is alleged that when the respondent had presented the cheque to his banker, i.e. ICICI Bank, Janakpuri, New Delhi for encashment in his account no. 008701006458 on 22.10.2018, to his utter shock and dismay, the cheque had been returned dishonoured with the remarks "Funds Insufficient", based on the return memo dated 24.10.2018. It is stated that thereafter, on 01.11.2018, the respondent had served upon the petitioner a legal notice calling upon him to make the requisite payment; however, the same was not complied with. Accordingly, the respondent was constrained to institute a complaint against the accused for offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'].

3. During the course of proceedings, it was at the stage of cross-examination of the respondent that the petitioner doubted the financial capacity of the respondent to advance the loan and sought for production of certain documents, which were allowed; however, the respondent's cross-examination had been closed vide order dated 17.02.2023. It is the case of the petitioner that the respondent failed to comply with the relevant directions for several months, and it was only on 11.09.2024 that he fully disclosed the relevant documents,

which allegedly revealed some anomalies, which prompted the petitioner to file the application under Section 311 of Cr.P.C. seeking the re-call of the respondent-complainant for his examination. However, the said application was dismissed by the learned Magistrate *vide* impugned order dated 19.12.2024. The relevant content of the impugned order is extracted below:

> "1. By virtue of the application filed, the accused has sought to recall CWl to produce additional documents, including income tax returns, balance sheets, and other financial records for the years 2015-16 and 2017-18. The accused contends that such documents are necessary to substantiate his defense that the cheque in question was issued as a security cheque and not towards the repayment of a loan.
>
> 2. Through the application, the accused submits that the complainant's cash-in-hand figure of ₹37,92,494.40/- is disproportionate to the complainant's declared net income of ₹2,95,030/- for the financial year 2016-17. The accused also seeks clarity on alleged financial obligations, such as salary payments of ₹41,71,415.73/- and loan amounts of ₹35,43,211/-, which, according to the accused, are incompatible with the complainant's declared financial position. The accused submits that the application is made in good faith and not to delay proceedings, asserting that recalling the complainant is essential for a just adjudication of the matter.
>
> 3. On the other hand, the complainant opposes the application, arguing that the trial has already concluded, and the application has been filed at the stage of judgment solely to delay proceedings. It is further argued that the accused has admitted to receiving the cheque amount from the complainant, and the documents sought are irrelevant to the determination of liability under the Negotiable Instruments Act.
>
> 4. I have heard the arguments advanced by the bar at length and perused the case record.
>
> ***
>
> 6. Perusal of the case record reveals that the primary defence of the accused is that the complainant had a committee, where the accused used to deposit Rs. 50,000 per month. After making said payment for 20 months, the accused received back a total

of Rs. 10,00,000 from the complainant. He had issued the signed cheques in question to the complainant as security at the beginning of the committee. He refutes the complainant's allegation of him taking a loan of Rs. 10,00,000 from the complainant. He states that the cheque has been misused by the complainant.

7. Through the present application, the accused has prayed for recalling the complainant witness so as to cross examine him with respect to the documents that pertain to financial years (2016-17) preceding the alleged transaction of 09.07.2016. While income tax returns and financial records may indicate the complainant's financial standing, they have limited probative value in the present case.

8. The primary issue in this case is whether the cheque in question was issued in discharge of a legally enforceable debt or liability. Financial records from a year prior to the disputed transaction do not directly address this issue. While they may highlight discrepancies in the complainant's earlier financial records, their connection to the defense of the accused appears tenuous. The accused has already had ample opportunity to cross-examine CW1 on financial transactions. Moreover, under Section 138 of the NI Act, the complainant's financial position is not as material as the focus is on the existence of a legally enforceable debt or liability, which the accused has effectively admitted by acknowledging receipt of the cheque amount, albeit under the claim of it being related to a committee. The production of additional documents at this stage would not materially advance the defense.

9. Considering the above, this court finds that the application under Section 311 CrPC lacks merit. Moreover, the application, filed at the stage of judgment, appears to be an attempt to delay the proceedings."

4. The learned counsel appearing for the petitioner submits that the impugned order is violative of the principles of natural justice as it unjustly denies the petitioner the right to cross-examine the respondent upon his financial capacity, which is intrinsically linked to the petitioner's defence of the cheque being issued as a mere

security cheque and in his capacity of a member of the alleged chit fund that the respondent was, and not in relation to any friendly loan. It is contended that the denial of this opportunity to the petitioner renders it difficult for him to showcase that the cheque was not issued in lieu of any legally enforceable debt or liability, which is the fulcrum of a case under Section 138 of NI Act. Further, it was submitted that the delay on part of respondent in filing the relevant documents such as ITRs, balance sheets, etc. was deliberate, prolonged and sufficiently grave to necessitate the respondent's cross-examination thereon and was thus a fit case for the exercise of powers under Section 311 of Cr.P.C. by the Court, as the section clearly empowers the Courts to recall any witness if the same is essential in the interest of justice. Thus, it is submitted that the impugned order be set aside.

5. *Per contra*, the learned counsel appearing for the respondent submits that the impugned order is tenable and the present petition is misleading, and is a tactic of the petitioner to delay the proceedings and waste judicial time. It is submitted that the respondent's cross-examination, in particular, had already been concluded in February 2023; and thereafter even the statement of accused and defence evidence stands concluded and the matter now stands slated for hearing final arguments and passing of judgment. It is also contended that the petitioner had already admitted the issuance of the cheque in question for the amount of Rs. 10 lakhs, and through his application under Section 311 of Cr.P.C., he has been concocting stories and

poking holes in the respondent's claim to evade his liability. Lastly, it was submitted that no prejudice of any form has been caused to the petitioner so as to warrant interference with the impugned order.

6. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

7. At the outset, it may be apposite to note that the law as regards the purpose and scope of Section 311 of Cr.P.C. is well-settled. The said provision reads as under:

> "**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 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."

8. It has been repeatedly held by the Hon'ble Supreme Court that recall of a witness is not a matter of course, and power under Section 311 of Cr.P.C. has to be exercised judiciously, with caution and circumspection, and not arbitrarily or capriciously. It has also been emphasized that the power is to be exercised on the basis of facts and circumstances of each case, and the discretionary power has to be balanced carefully with considerations such as uncalled for hardship to the witnesses and uncalled for delay in trial [Ref: ***Vijay Kumar v. State of U.P.:*** *(2011) 8 SCC 136;* ***State (NCT of Delhi) v. Shiv Kumar Yadav:*** *(2016) 2 SCC 402;* ***Ratanlal v. Prahlad Jat:*** *(2017) 9 SCC 340*]. Furthermore, the power under Section 311 of Cr.P.C. must

be exercised for a legitimate and lawful purpose and not as a means to fill lacunas or prolong the trial proceedings unnecessarily. While the provision grants the Court the discretion to ensure a just decision of a case, it must be invoked cautiously, and to prevent delays, frivolous applications, or any kind of misuse.

9. In the present case, this Court notes that the accused has admitted his signatures on the cheque in question as well as on the promissory note, though he states that the said cheque was issued as a security cheque only.

10. However, it is apparent from the trial court records that the accused has already put to the complainant/CW-1, while cross-examining him, as to from where did he get the money to advance loan to the applicant, to which CW-1 had replied that he had arranged loan amount of Rs. 10 lakhs from his relatives, out of which Rs. 1-2 lakhs was of his own. Questions had also been put to CW-1 regarding disclosing the said loan in his ITR and as to what income he had declared in financial year 2017-18.

11. Thus, the counsel for the accused has already cross-examined CW-1 with respect to his financial capacity or source of funds. CW-1's evidence was closed *vide* order dated 17.02.2023 but the accused did not raise any objection then. Further, though the learned Magistrate vide order dated 17.02.2023 had also directed the complainant to bring ITR for financial year 2016-17 and balance sheet, the petitioner did not request the learned Magistrate to defer

the cross-examination of the complainant. The learned Magistrate also records in one order dated 10.05.2024 that – "*After the said order dated 17.02.2023 even the statement of the accused stands recorded and the DE stands concluded and now at this belated stage Ld. Counsel for the accused has pointed out the same.*"

12. Undisputedly, even the evidence of accused (DW-1) stands concluded and the matter is listed for final arguments, and it is at this stage, the accused wishes to re-call the complainant. In ***Indian Bank Association & Ors. v. Union Bank of India:*** *(2014) 5 SCC 590, inter alia*, it was observed by the Hon'ble Supreme Court that the Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant be conducted within three months of assigning the case; the Court has the option of accepting affidavits of the witnesses, instead of examining them in Court; the witnesses to the complainant and accused be made available for cross-examination as and when there is direction to this effect by the Court, etc. Furthermore, in ***J.V. Baharuni v. State of Gujarat:*** *2014 (10) SCC 494*, it was observed that: "when law expects something to be done within prescribed time limit, some efforts are required to be made to obey the mandate of law."

13. Therefore, considering the overall facts and circumstances of the case, and in view of the fact that the evidence of accused also stands concluded, the matter is now pending at the stage of final arguments, and CW-1 has already been cross-examined on the aspect of financial capacity/source of funds, this Court does not find it

appropriate to allow the application under Section 311 of Cr.P.C.

14. Accordingly, the present petition, alongwith pending application, is dismissed.

15. The accused, however, shall be at liberty to raise all arguments in his defence before the learned Trial Court at the stage of final arguments, and the observations made in this order shall not affect the merits of the case during trial.

16. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 12, 2025/ns
td/ts