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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Avtar Singh

....Petitioner

V/s

M/s Des Raj & Co.

....Respondent

Date of decision: 01.10.2026**Date of Uploading : 05.10.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. S.K. Singla, Advocate for the petitioner.

Mr. Jai Bhagwan, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking quashing of the orders dated 18.05.2026 and 08.09.2026 passed by Judicial Magistrate 1st Class, Malerkotla, in Complaint No. NACT-765-2021, titled M/s Des Raj & Company vs. Avtar Singh, instituted under Section 138 of the Negotiable Instruments Act, 1881.

2. The relevant factual matrix of the *lis* in hand is adumbrated thus:

(i) The respondent-complainant filed the complaint in question under Section 138 of the Negotiable Instruments Act alleging that the petitioner (herein) had borrowed a total amount of Rs.10,30,000/- from the complainant on different occasion(s). As per the complainant, an amount of Rs.7,00,000/- was advanced on 13.12.2019; Rs.2,30,000/- on 22.05.2020

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and Rs.1,00,000/- on 10.06.2020. In support of the alleged transactions, the complainant has relied upon its books of account, ledger entries and bank statements. It has been further alleged that, towards discharge of the said liability, the petitioner issued cheque No.000368 dated 27.08.2021 for a sum of Rs.10,30,000/-. However, on presentation, the cheque was dishonoured on account of “insufficiency of funds”. A legal notice was thereafter issued to the petitioner but the said amount was not paid which resulted in the filing of the complaint in question.

(ii) The complainant led its evidence and its representative Sanjeev Kumar was examined at length. During his cross-examination, question(s) were put to him with respect to the transactions in question, relevant J-Forms, connected firms and writings relied upon by the accused. The witness also produced various documents including the books of account, ledger and bank statements. The record further reflects that the witness of the complainant was recalled and extensively cross-examined by the defence.

(iii) In the statement under Section 313 Cr.P.C., the petitioner denied the alleged loan transaction and took the defence that the cheque in question had been obtained as a security cheque and was not issued against any legally enforceable debt or liability. Furthermore, the defence was that the amount in question was actually payable to him against crops sold by him during the years 2018-19 and 2019-20 and the transaction(s) relating to his crops had allegedly been shown through other connected firms. The petitioner sought to rely upon J-Forms, auction registers and other market records in support of this defence.

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(iv) During the defence evidence, the petitioner examined Manpinderjit Singh, a Market Committee official, as DW-1. The said witness brought the record relating to M/s Sushil Kumar Ravinder Kumar and also produced the original auction register. The evidence of DW-1 shows that, according to the Market Committee record, certain crops of the petitioner were shown to have been sold through M/s Sushil Kumar Ravinder Kumar as also certain other entries related to the complainant firm. The witness, however, also stated that he had no personal knowledge of the transactions between the parties. The record further reflects that on 18.05.2026, when the matter was fixed for defence evidence, witness Harish Kumar Ghai appeared but stated that he did not wish to depose in the case. The learned Trial Court considered the request regarding the said witness and thereafter recorded that he was not to be examined. As no other defence witness was present, the learned Trial Court closed the defence evidence and fixed the matter for arguments.

(v) Thereafter, the petitioner (herein) had moved an application under Section 348 of the BNSS (erstwhile Section 311 Cr.P.C.) read with Section 94 of the BNSS, seeking reopening of his defence evidence; recall of DW-1 and permission to produce/summon further documents. The petitioner also sought permission to examine a handwriting expert and to summon J-Forms and account books relating to M/s Sushil Kumar Ravinder Kumar. The respondent-complainant opposed the said application by submitting that the petitioner had already led his defence evidence and the same had been closed vide order dated 18.05.2026. Furthermore, the petitioner had sufficient opportunity to obtain the relevant documents and

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could have produced the same when DW-1 was originally examined. The application in question was an attempt to fill up lacunae in the defence and to delay the proceedings. The trial Court, after considering the rival submissions, dismissed the application vide order dated 08.09.2026. The learned Court noticed that the accused had already examined the Market Committee Clerk and had cross-examined the complainant regarding the relevant J-Forms. The Court further noticed that an earlier request concerning Ajay Gupta had already been dismissed on 18.05.2026 and no further evidence had thereafter been led by the accused. The trial Court also observed that the present application had been moved after the matter had substantially progressed and permitting the application in question, at this belated stage, would result in grave injustice and delay in trial.

3. Learned counsel for the petitioner has iterated that the impugned orders have resulted in denial of a fair opportunity to the petitioner to establish his defence. Learned counsel has further iterated that the defence sought to be produced by the petitioner through application in question, would go to the root of the complaint as the petitioner has consistently denied having taken any loan from the complainant. It has been further contended that the petitioner has specifically pleaded that the amount received by him was against the crops sold by him and the transactions with regard to his crops were shown through other firms connected with the complainant. According to learned counsel; the relevant J-Forms, auction registers and account books would show the true nature of the transactions in question and would assist the Court in deciding whether or not the cheque in question was issued towards a legally enforceable debt or liability. It has



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been further contended that DW-1 - Manpinderjit Singh, a Market Committee official, had already brought forward certain record(s) and had admitted that the Market Committee had maintained the records concerning the relevant transactions. It has been argued that the recalling of DW-1 for the limited purpose of producing or explaining the remaining record would cause no prejudice to the complainant. It has been further contended that the petitioner now only seeks one effective opportunity and undertakes to complete the examination of the recalled witness on the same date. Furthermore, the application in question is not intended to delay the trial and no prejudice would be caused to the complainant if the said witness is recalled. Furthermore, the petitioner also seeks comparison of the writings appearing on the relevant J-Forms and Mark D-1 to D-3 by a handwriting expert. It has been argued that the power under Section 348 BNSS (erstwhile Section 311 Cr.P.C.) is intended to ensure a just decision and a party should not be deprived of opportunity to produce relevant material evidence merely because its defence evidence has already been closed.

On the strength of aforesaid submissions, the grant of *petition in hand* is entreated.

4. In *oppugnation*, learned counsel appearing for the respondent-complainant has contended that the petition in hand is nothing but an attempt to delay the trial which has already progressed substantially. Learned counsel has further iterated that the petitioner has been granted sufficient opportunity to lead his defence and he has already examined DW-1, the concerned Market Committee official. Furthermore, the petitioner was fully aware of the nature of his defence from the very beginning. It has



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been further contended that the petitioner cannot be permitted to repeatedly reopen his defence merely because he has subsequently realised that some additional material may be useful to him. According to learned counsel, the application in question has been filed only after the defence evidence was closed and the matter had been fixed for final arguments. Moreover, the power under Section 348 of BNSS is discretionary and cannot be exercised merely to fill up a lacuna in the defence. Accordingly, a prayer has been made for the dismissal of the petition in hand.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.

(v) A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.



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(vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*

(II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guide-lines as every case is sui generis in terms of factual conspectus.*

(III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

7. The limited question raised before this Court is whether the orders dated 18.05.2026 and 08.09.2026 suffer from illegality or perversity which would justify interference by this Court in exercise of the inherent jurisdiction.

As per pleadings of the case in hand; the petitioner has taken a specific defence that the cheque in question was not issued against a loan but was a security cheque and the amount allegedly received by him was with regard to transactions relating to sale of crops. The record further reflects that this defence was put to the complainant during his cross-examination. The complainant was specifically confronted with the J-Forms and the writings relied upon by the petitioner. Furthermore, the petitioner was permitted to lead defence evidence and examine the concerned Market Committee official who stepped into the witness box as DW-1. The said witness had brought the record available with him and deposed regarding the auction register and the J-Forms relating to the crop transactions. His evidence also shows that the Market Committee records reflected certain crop transactions of the petitioner through M/s Sushil Kumar Ravinder

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Kumar and certain transactions through the complainant firm. Therefore, it cannot be said that the petitioner was denied an opportunity to establish his defence. On the contrary, the record shows that the petitioner was given an opportunity to cross-examine the complainant and thereafter to lead his own evidence.

8. The order dated 18.05.2026 was passed after the petitioner had already examined DW-1 and the witness namely Harish Kumar Ghai, purported to be examined as defence witness, suffered a statement that he did not wish to depose. The trial Court, thereafter, observed that it was the last opportunity granted to the accused - petitioner (herein) for DWs. Subsequent thereto, the trial Court closed the defence evidence and fixed the matter for final arguments. The petitioner had not posed any challenge to the said order dated 18.05.2026 at the relevant stage, instead, moved an application seeking reopening of the defence evidence; recall of DW-1; production of further documents & examination of a handwriting expert, much after the defence evidence had been closed.

9. The power under Section 311 Cr.P.C. is indeed wide and plenary but such power must be exercised judiciously and not in a routine manner, especially in the absence of any cogent justification. The power is required to be exercised where the evidence sought to be brought on record is necessary for a just decision of the case and not merely because a party wishes to improve, supplement or reconstruct its case after the closure of evidence. In the case in hand, the petitioner has already put his defence regarding the J-Forms and transactions related to sale of crops to the complainant. He has also examined the Market Committee official. The

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record further shows that the witness of the complainant was extensively cross-examined on the same aspects on which the petitioner now seeks to pursue further.

10. The petitioner now seeks to recall DW-1 primarily for production of further records and thereafter seeks to summon documents from another firm and to have the writings compared by a handwriting expert. In the considered opinion of this Court, such a course, at this advanced stage of the trial, cannot be permitted merely on the assertion that the same is very much necessary for just adjudication of the case. The trial Court had duly considered the evidence and recorded a finding that the application in question had been moved at a very belated stage despite sufficient opportunity had already been granted to the accused (petitioner herein) as also the fact that the matter had progressed substantially. The plea regarding the transactions of sale of crops and the connected firms was not a new plea which emerged for the first time after closure of the defence evidence. The mere fact that a document may have some relevance to the defence cannot, by itself, be a ground for reopening the entire defence evidence. The proposed handwriting examination also does not persuade this Court which would call for interference by this Court as the trial Court had found that such an exercise, at this stage was not necessary for a just decision of the case. This Court, while exercising jurisdiction under Section 528 BNSS, is not required to substitute its own view merely because another view may also be possible. No illegality or perversity is found in the impugned orders warranting interference by this Court. In the factual milieu



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of the case, the application in hand appears to be an afterthought and lacks *bona fide*.

11. For the foregoing reasons, this Court does not find any error in the impugned orders passed by the trial Court. In the considered opinion of this Court, the trial Court has appropriately dealt with the application in question by dismissing the same.

12. In view of the above ratiocination, it is ordained thus:

(i) The impugned order dated 18.05.2026 and 08.09.2026 passed by Judicial Magistrate 1st Class, Malerkotla, do not call for any interference and deserves dismissal. Ordered accordingly.

(ii) Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the trial Court shall proceed further, in accordance with law, without being influenced therefrom.

(iii) Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

October 01, 2026

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No