

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:085142



124

CRM-M-29307-2025 (O&M)
Date of Decision: 14.07.2025.

Mohinder Singh @ Mohinder Singh Chaudhary ...Petitioner.

Versus

State of Haryana and another ...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Ajay Chauhan, Advocate and
Mr. Diwan S. Adlakha, Advocate for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

SUKHVINDER KAUR, J.

CRM-26398-2025

Prayer made in the application is for placing on record Annexure P-5 as well as exemption from filing certified copies of the same.

Application is allowed. Annexure P5 is taken on record, subject to all just exceptions.

CRM-M-29307-2025

Present petition has been filed under Section 528 of BNSS for quashing of order dated 02.05.2025 (Annexure P3) in NACT-26341 of 2018, under Section 138 of N.I. Act passed by learned Judicial Magistrate Ist Class, Gurugram, whereby application under Section 348 BNSS filed by

the petitioner/ complainant for getting examined two witnesses, has been dismissed.

Brief facts relevant for the purpose of disposal of the present petition are that vide impugned order dated 02.05.2025 passed by learned Judicial Magistrate Ist Class, Gurugram, whereby application under Section 348 BNSS filed by the petitioner/ complainant for examining two witnesses as mentioned in the head note of the petition has been dismissed. It has been alleged in the petition that initially respondent No.2/ accused cheated him and deliberately defrauded the petitioner for an amount of Rs.16,07,700/- by not paying the rent, electricity bill and water bill for the premises i.e. plot No.57, Sector 7, IMT Manesar, Gurugram, which respondent No.2/ accused had leased out from the petitioner/ complainant vide rent agreement dated 11.09.2015. In discharge of his liability, accused/ respondent No.2 issued a cheque No.146381 drawn on Punjab National Bank, Ramleela Ground, Gurugram to the tune of Rs.16,07,700/- in favour of the petitioner/ complainant. The petitioner presented the said cheque to his banker which was returned for the reasons 'Accounts Closed' vide bank memo dated 18.06.2018. Thus, complaint under Section 138 of N.I. Act was instituted by the complainant. Subsequently, when the petitioner intended to examine the witnesses to link the chain of evidence in the present case, after completion of his cross-examination by moving an application under Section 311 Cr.P.C./ 348 BNSS, the said application had been dismissed and the case was fixed for defence evidence, even without closing the evidence of the complainant/ petitioner.

Learned counsel for the petitioner has contended that despite due diligence and despite supplying relevant documents to the counsel for

the petitioner, counsel for the petitioner could not place on record the said documents. The cross-examination of the complainant was recorded on 24.04.2025 and on the same date, the complainant/ petitioner filed an application under Section 348 BNSS/ 311 Cr.P.C. for getting examined the additional witnesses as detailed in the said application for just decision of the case. He urged that trial Court without appreciating the facts and circumstances of the case dismissed the said application on untenable grounds vide order dated 02.05.2025. Learned trial Court while passing the impugned order did not apply its mind judiciously and has failed to appreciate the actual facts brought on record and has prayed that the finding recorded by the trial Court in this aspect be set aside being unsustainable in the eyes of law.

I have heard learned counsel for the petitioner at considerable length and have gone through the material placed on record.

As per provision of Section 311 Cr.P.C./ 348 BNSS, a witness can be recalled at any stage of the case, if it is essential for the just decision of the case. Section 311 Cr.P.C./ 348 BNSS is reproduced as under:-

“348-Power to summon material witness, or examine person present-Any court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, 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.”

By way of filing the application under Section 311 Cr.P.C./ 348 BNSS, the complainant/ petitioner wants to summon witness No.1-The Accounts Officer, DHBVN, IMT Manesar to prove the record of electricity

bill of premises factory number P-57, Sector, 7, IMT, Manesar, A/c No.G3, IBA410694 with ledger and record of payment; (2) Sh. Manoj Tyagi, General Secretary, IMT, Manesar, Industrial Association, Gurugram. The accused during cross-examination of the complainant disputed some of the bills and receipts of electricity bills and photographs with Secretary IMT Manesar, so the complainant wants to examine the Account Officer of the Electricity Department and Secretary IMT, Manesar, in order to prove his contentions. Though, earlier the petitioner was provided with the opportunity to lead his evidence and even if some lapse is there on the part of the petitioner in not examining these witnesses, while adducing his evidence, even then the witnesses as alleged in the application under Section 311 Cr.P.C./ 348 BNSS, appears to be relevant and material, thus their examination appears to be necessary for proper and just decision of the case.

The impugned order dated 02.05.2025 is hereby set aside, subject to depositing of cost of Rs.8,000/- with DLSA, Gurugram. Only two effective opportunities will be provided to the petitioner for examining the aforesaid witnesses as alleged in the application under Section 311 Cr.P.C./ 348 BNSS and to conclude his entire evidence.

Present petition stands allowed in the aforesaid terms.

(SUKHVINDER KAUR)
JUDGE

14.07.2025.

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No