



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

206

CRM-M-39575-2024 (O&amp;M)

Date of decision: 09.09.2025

Mahabir Bhadu

...Petitioner

**Versus**

M/s Shiv Jal Jewelers

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Ms. Ramesh Sharma, Advocate  
for the petitioner.

Mr. Vaibhav Narang, Advocate  
for the respondent.

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**AMAN CHAUDHARY. J. (ORAL)**

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' in short), for quashing the order dated 08.07.2024, Annexure P-2, passed by learned Judicial Magistrate 1st Class, Abohar, in a criminal complaint bearing no.NACT-850-2019, titled as 'M/s Shiv Lal Jewelers vs. Mahabir Bhadu', vide which the application under Section 311 of Code of Criminal Procedure, 1973 ('CrPC' in short), filed by the petitioner came to be dismissed.

2. Learned counsel submits that the petitioner seeks to recall the complainant for further cross-examination on account of the fact that he was not present when the same was conducted and there were certain material questions left to be put to him.



3. Learned counsel appearing for respondent on the other hand refers to para 2 of reply to the said application, annexed as P-2, wherein this fact was refuted and that cross-examination was rather deferred for more than 3/4 times for its completion. It was filed after the closing of evidence, when the matter was adjourned for recording of statement under Section 313 CrPC, to fill up the lacunae and also delay the proceedings.

4. Heard.

5. An apt reference ought to be made to the categoric observation of the trial Court in the impugned order, which reads thus:-

“4. Vide this present application the accused has sought to recall the complainant and further cross-examine him with regards to the bills Ex.C10 to Ex.C21 (copies), original customer copies of the same being in the possession of the accused. A wide discretion is vested u/s 313 CrPC with the criminal courts to recall any witness in the interest of justice. The only determining factor while exercising the said power is whether recalling the said witness is necessary to decide ‘the real controversy’ between the parties. It was contended that the ld. Counsel for the accused that due to ill-health of the accused, the accused could not meet his counsel for proper discussion of the present complaint and cross-examination was done for the accused in absence of the accused. That due to absence of the accused on the date of cross-examination of the complainant, material questions were left out and could not be put to the complainant with regards to the bills Ex.C10 to Ex.C21. A perusal of the file reveals that complainant was cross-examined on 31.05.2023, 18.09.2023, 20.10.2023 and 17.11.2023. Thus, the cross-examination of the complainant was done several times stretching over four dates. A perusal of the zimini orders further reveals that on these dates, on which the cross-examination of the complainant was done, the accused was present in the Court. Thus, the accused has already obtained ample and sufficient opportunities to cross-examine the complainant, that too in his own presence and also in the presence of his counsel. The evidence of the complainant was closed on 29.11.2023 and case was fixed for recording the statement of the accused under Section 313 CrPC. While adjudicating a criminal trial the right of speedy justice of the accused as well as of the complainant cannot be ignored.



Sufficient opportunities have already been availed by the accused to cross-examine the complainant. The said documents were already readily available with the accused at the time of cross-examination of the complainant, but the same were not put to the complainant for reasons best known to the accused. If such applications for recalling the complainant for cross-examining him again are allowed as a matter of routine, the trial would never come to an end and it would result in failure of justice and would be an abuse of process of law. Thus, the Court sees no ground to allow the present application and consequently it stands dismissed. However, on a parting note, it is clarified that the accused is at liberty to produce and prove the said documents in his defence evidence, subject to just exceptions.”

6. Hon’ble the Supreme Court in **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, 2019 (14) SCC 328 had held that the power under Section 311 CrPC must be exercised only for strong and valid reasons, with caution and circumspection, and not when the application is filed as an abuse of the process of law.

7. Relying on the foregoing judgment, this Court dismissed CRM-M-11344-2025, titled as **Tarun Kumar vs. Rajesh**, on 28.02.2025, wherein also, the re-examination of the complainant sought on the ground that the counsel had not properly cross-examined him, as certain questions were left to be asked from him, as it clearly indicated an attempt to improve his version and fill a lacuna.

8. Likewise in **Garadiya vs. State of MP**, M.Cr.C. No.9718 of 2020, decided on 16.03.2020, it was held that a mere change of counsel or allegations that the previous counsel did not ask relevant questions cannot constitute a valid ground to recall a witness of the complainant, while in the present case the counsel was also the same.

9. In view of the foregoing, the order passed by the trial Court does not



warrant any interference, it being neither perverse nor illegal and as such, the petition is dismissed, being devoid of merits.

10. The observations made hereinabove are only for the purpose of adjudication of the present petition and shall not be construed as an expression of opinion on the merits of the case.

11. Pending application(s), if any, shall also stand disposed of accordingly.

**(AMAN CHAUDHARY)**  
**JUDGE**

**09.09.2025**

ashok

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No