2026:PHHC:088954

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

122

CRM-M-32476-2026 (O&M)
Date of decision: 01.07.2026

Kapil Kumar Gupta ...Petitioner

Versus

Dinesh Kalra ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bharat Mani Goyal, Advocate and
Mr. Siddhant Jain, Advocate
for the petitioner.

Mr. Viren Sibal, Advocate and
Ms. Tisha Kalra, Advocate
for the respondent.

MANISHA BATRA, J. *(Oral)*

1. Prayer in this petition, filed under Section 528 of BNSS, 2023, has been made for setting aside the order dated 06.04.2026 (Annexure P-1), passed by the Court of learned Judicial Magistrate First Class, Ludhiana in Criminal Complaint bearing No. COMA-622/2023, titled as ***Dinesh Kalra v. Kapil Kumar Gupta***, filed under Section 138 of the Negotiable Instruments Act, 1881, whereby an application filed under Section 348 of BNSS *(erstwhile Section 311 of Cr.P.C.)* for summoning/examining one Dheeraj Sapra, Accountant of the respondent/complainant's firm along with additional documents had been allowed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent/complainant has instituted the aforementioned

complaint alleging that the petitioner had issued a cheque bearing No. 251003 dated 12.10.2022 for ₹10,00,000, which, on presentation, was dishonoured on 11.11.2022 with the remarks "Account Closed." A legal notice dated 07.12.2022 was issued to the petitioner/accused calling upon him to make the payment of the cheque amount but he failed to do so and submitted a reply to the legal notice. Since the payment was not made by the petitioner, the respondent/complainant filed the aforesaid complaint, whereby the petitioner was summoned by the learned trial Court to face trial, vide order dated 16.03.2023.

3. During trial, the complainant (CW-1) was cross-examined on 29.04.2025 and 28.08.2025. During cross-examination, he admitted that although documents such as invoices, bills, GST registration certificate, GST returns, ledger account, balance sheet and books of accounts were in his possession prior to filing of the complaint, none of them had been produced before the Court. He further admitted that except the account statement (Ex. C-6), no document had been placed on record to establish the alleged outstanding liability. After completion of his cross-examination, the respondent/complainant filed an application dated 24.12.2025 under Section 348 BNSS (Section 311 CrPC) seeking permission to examine Sh. Dheeraj Sapra, Accountant of the complainant firm, along with production of additional documents including invoices, ledger account, GST registration certificate, GST returns, balance sheet and audit report. The petitioner opposed the application contending that it was a clear attempt to fill up

lacunae in the prosecution case after the defence had already been disclosed through cross-examination. However, vide order impugned dated 06.04.2026, the learned trial Court allowed the application holding that the proposed evidence was necessary for a just decision of the case and that the accused would have an opportunity to cross-examine the additional witness. Aggrieved from the same, the petitioner has filed the present petition seeking quashing of the impugned order.

4. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as it permits the complainant to fill up the lacunae in his case after completion of his cross-examination and after the defence of the accused had already been disclosed. It is submitted that during cross-examination, the complainant categorically admitted that no invoices, bills, GST registration certificate, GST returns, ledger account, balance sheet or books of account had been produced on record despite the same being in his possession prior to filing of the complaint. The complainant further admitted that except the account statement, no document had been produced to establish the alleged outstanding liability. It is further argued that having consciously chosen to prosecute the complaint on the basis of the documents already produced, the complainant cannot now be permitted to introduce additional documentary evidence through his accountant merely to overcome the deficiencies exposed during cross-examination. The power under Section 348 BNSS cannot be exercised to provide a party with a second opportunity to improve its case or repair the defects in the evidence already

led. The impugned order causes serious prejudice to the petitioner by depriving him of the benefit of the admissions made by the complainant and, therefore, deserves to be quashed. Hence, it is urged that the petition deserves to be allowed.

5. Notice of motion.

6. Mr. Viren Sibal, Advocate, who has advance notice of the petition, has put in appearance on behalf of the respondent/complainant and has filed his power of attorney. He has argued that there is no infirmity or illegality in the impugned order and the learned trial Court has rightly exercised its jurisdiction under Section 348 BNSS in permitting examination of the accountant along with the relevant business records as the evidence is essential for the just adjudication of the complaint arising out of commercial transactions. It is argued that the accountant had already been cited as a witness in the list of witnesses and his examination was considered necessary during the post-summoning stage. It is further submitted that no prejudice would be caused to the petitioner, who would have full opportunity to cross-examine the additional witness and rebut the documents sought to be produced. It is further argued that Section 348 BNSS confers wide powers upon the Court to summon any witness at any stage where such evidence appears necessary for arriving at the truth and securing a just decision. The object of the provision is to prevent failure of justice and not to restrict the Court on technical or procedural grounds. Hence, it is urged that the petition deserves outright dismissal.

7. This Court has heard the rival submissions.

8. It is well settled that the power, under Section 311 of Cr.P.C. (Section 348 of BNSS) can be exercised by the Court ***at any stage of any inquiry, trial or other proceedings under the Code*** to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the Court by the Legislature to exercise the powers under this provision.

9. In ***Zahira Habibulla H. Sheikh and another v. State of Gujarat and others, 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of Cr.P.C. as under:-

> "*Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done*

> *with an object of getting the evidence in aid of a just decision and to uphold the truth."*

10. In ***Mannan Sk. and others v. State of West Bengal and another 2014 (13) SCC 59,*** Hon'ble Apex Court had allowed the application filed under Section 311 of Cr.P.C. and the witness was recalled re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

11. On applying the aforementioned ratio of law to the present case, this Court finds no illegality or perversity in the impugned order passed by the learned trial Court. The additional evidence sought to be led by the respondent pertains to the very transaction forming the subject matter of the complaint and comprises business records, namely, invoices, ledger account, GST registration certificate, GST returns, balance sheet and audit report, which are relevant for the just adjudication of the controversy. The proposed witness is the Accountant of the complainant's firm, who was admittedly cited in the list of witnesses at the time of institution of the complaint. The learned trial Court has exercised its discretion under Section 348 of BNSS keeping in view the object of the provision, namely, to enable the Court to arrive at the truth and render a just decision. The contention of the petitioner that the respondent is seeking to fill up lacunae in his case also does not merit acceptance. Merely because certain documents were not produced at an earlier stage would not preclude the Court from permitting their production if the Court is satisfied that such evidence is essential for a just decision of the case. The power under Section 348 of BNSS is meant to advance the cause of justice and cannot be

curtailed by adopting a hyper-technical approach. At the same time, the petitioner cannot be said to have suffered any prejudice inasmuch as he shall have full opportunity to cross-examine the additional witness and rebut the documents sought to be brought on record.

12. The scope of interference by this Court, while exercising its inherent jurisdiction under Section 528 of BNSS, against an interlocutory order passed in exercise of discretion under Section 348 of BNSS, is limited. Unless the order is shown to be arbitrary, perverse or resulting in manifest miscarriage of justice, no interference is warranted. In the present case, the learned trial Court has assigned cogent reasons while allowing the application and has exercised the jurisdiction vested in it in accordance with settled principles of law. This Court does not find that the impugned order suffers from any jurisdictional error or material irregularity warranting interference. Consequently, finding no merit in the present petition, the same is dismissed.

13. Needless to observe that nothing stated herein shall be construed as an expression on the merits of the complaint, which shall be decided by the learned trial Court independently on the basis of the evidence adduced by the parties.

01.07.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*