



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

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CRM-M-16085-2026 (O&M)

Decided on : 24.03.2026

Anil Kumar Malhotra

..... Petitioner

VERSUS

Vijay Kansal

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Bharat Mani Goyal, Advocate for the petitioner.

SURYA PARTAP SINGH, J.

By virtue of present petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, the extraordinary jurisdiction vested in this Court has been sought for quashing of order dated 05.03.2026. The abovesaid order, hereinafter being referred to as 'impugned order' only. has been passed by the Court of learned Judicial Magistrate First Class Ludhiana, hereinafter being referred to as 'trial Court' only.

2. The impugned order has been passed in a complaint for the commission of offence punishable under Section 138 of Negotiable Instruments Act. By virtue of abovementioned order, an application under Section 348 of BNSS, seeking for permission to lead additional evidence, filed by the respondent/complainant, hereinafter being referred to as 'respondent' only, has been allowed.



3. In nut-shell, the facts emerging from record are that a complaint has been filed by the respondent against the petitioner/accused for the offence under Section 138 of NI Act. It has been alleged by the respondents, in the complaint, that in discharge of his legally enforceable debt, the petitioner/accused had issued a cheque in favour of the respondent, and that on presentation before the banker of petitioner/accused, the abovesaid cheque was dishonoured.

4. In the abovementioned complaint, during the course of trial an application under Section 348 of BNSS seeking for permission to lead additional evidence was filed by the respondent, and the same has been allowed by the learned trial Court vide impugned order. The petitioner/accused, hereinafter being referred to as 'petitioner' only, is aggrieved of the abovementioned order.

5. Heard.

6. It has been contended by learned counsel for the petitioner that the impugned order is an outcome of total non-application of mind and that the settled legal principles have been ignored by the learned trial Court. While referring to the contents of statement of CW-1 recorded during the course of trial, it has been contended by learned counsel for the petitioner that in his testimony, the CW-1 has specifically deposed before the learned trial Court that the copies of 'Income Tax Returns' along with its computation charts and balance sheet belonging to the respondent, have not been proved. As per learned counsel for the petitioner, in addition to above,



the CW-1 has also admitted that the statement of account of the account of complainant, being maintained in ICICI Bank, too, has not been produced.

7. As per learned counsel for the petitioner, subsequently when the deficiencies in respondent's case got exposed, the respondent with an intention to fill-up the lacunae moved an application under Section 348 of BNSS and sought permission to lead additional evidence. According to learned counsel for the petitioner, merely on the basis of assumptions and presumptions, the learned trial Court has allowed the abovementioned application and therefore, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

8. In support of his arguments, the learned counsel for the petitioner has placed reliance upon the principles of law laid down in the case of 'Andeep Agro Feeds V/s Gurmeet Lal' 2025 SCC OnLine P&H 19490. In the abovementioned case, this Court has observed that 'the accused has the privilege to hide his defence or to open it, if so chosen, even at the last stage of the trial and in that case, the respondent/accused had opened its defence during the cross-examination on 20.01.2023, when all the relevant question in regard to admissibility/inadmissibility of the account statement were put to the complainant during his cross-examination. The Hon'ble Supreme Court has further observed that even if the contention of the petitioner is accepted, that the application of the petitioner had been moved on 28.02.2024, undoubtedly, complainant after facing a situation during cross-examination, realize his fault and then the application has been



moved to fill the lacuna, to deprive the accused from drawing any benefit out of the cross-examination of the complainant’.

9. While relying upon the principles of law, the learned counsel for the petitioner has contended that by giving opportunity to the respondent to lead additional evidence, an irreparable loss and injustice has been caused to the petitioner, and that otherwise also, the impugned order is against the settled principles of law and therefore, the same deserves to be set aside.

10. The record has been perused carefully.

11. As far as the factual matrix of the present case is concerned, there is no denial of the fact that the statement of respondent has already been recorded as CW-1, and thereafter, the application Section 348 of BNSS seeking for permission to lead additional evidence has been moved. It is relevant to note here that by virtue of abovementioned application, the respondent is trying to place on record the statement of account being maintained by the respondent in ICICI Bank and also the copy of ‘Income Tax Returns’. Both the abovementioned documents are the documents, which cannot be created in back date by the respondent. Thus, with regard to abovementioned documents this possibility is ruled out that if permitted to place on record only the genuine documents will come on record and not a created or procured one.

12. With regard to relevance of abovementioned documents in the instant trial, it is pertinent to mention here that definitely the



abovementioned documents will help the Court in arriving at a right conclusion as to whether there was any legally enforceable debt, payable by the petitioner to the respondent, or not.

13. The similar situation has been dealt with by the Hon'ble Supreme Court of India in the case of 'Rajendra Prasad V/s The Narcotic Cell, Delhi' AIR 1999 Supreme Court 2292, wherein it has been observed that the Court has power to recall any witness at any stage of case, if Court considers it necessary for a just decision. The Hon'ble Supreme Court of India has also observed that 'lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better'.

14. In the abovementioned case, the lacunae was discovered by the prosecution at the time of defence evidence and the Hon'ble Supreme Court of India permitted the prosecution to lead additional evidence.



15. If the facts and circumstances prevailing in the present case are analyzed in the light of abovementioned principles of law, it transpires that the evidence being sought to be produced by the respondent will definitely help the Court in arriving at a right conclusion and the same is necessary for just and proper decision of the case. Hence, it is hereby observed that apparently there is no illegality or infirmity in the impugned order and there is no scope to quash the impugned order.

16. As a sequel to abovementioned observation, it is hereby held that the present petition is devoid of merits and deserves dismissal. The same is hereby *dismissed*, accordingly.

17. Pending miscellaneous application(s), if any, stand(s) disposed of, accordingly.

(SURYA PARTAP SINGH)
JUDGE

24.03.2026

Gaurav Thakur

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No