



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

Sr. No.128

**CRM-M-20192-2026
Date of Decision: 16.04.2026**

VINOD KUMAR

...Petitioner

Versus

M/S MAITRI MOTORS

....Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present:- Mr. Vimal Kumar Gupta, Advocate
for the petitioner.

MANDEEP PANNU, J. (Oral)

1. The present petition has been filed under Section 528 of the BNSS for quashing of the impugned order dated 17.11.2025 passed by the learned Judicial Magistrate First Class, Gurugram in complaint under Section 138/141/142/143-A of the Negotiable Instruments Act bearing No. *NACT/16533/2020* dated 27.08.2020, whereby the application under Section 311 Cr.P.C./ Section 348 BNSS filed by the respondents/complainant was allowed.

2. Brief facts necessary for disposal of the present petition are that the complainant had moved an application under Section 311 Cr.P.C. stating that due to inadvertence, the Special Power of Attorney executed by the proprietor namely Aridaman Singh in favour of Chander Mohan could not be placed on record at the time of filing of the complaint. It was further pleaded that Chander Mohan was only an authorised signatory of M/s Maitri Motors and his father Aridaman Singh was the actual proprietor of the firm, and



therefore permission was sought to place the said SPA on record and to examine the proprietor as a witness. The said application was vehemently opposed by the accused by filing a reply contending that the complaint had been filed in the name of Chander Mohan as proprietor/authorised signatory and no such plea regarding Aridaman Singh being the proprietor was taken earlier, and that the application was moved only after cross-examination to fill up lacuna and to change the nature of the complaint. However, the learned trial Court, vide impugned order dated 17.11.2025, allowed the application holding that the evidence sought to be produced was essential for just decision of the case and that no prejudice would be caused to the accused.

3. Learned counsel for the petitioner has contended that the learned trial Court has failed to appreciate that in the statutory notice as well as in the complaint under Section 138 of the Negotiable Instruments Act and even in the affidavit tendered in evidence, Chander Mohan had represented himself as proprietor/authorised signatory of M/s Maitri Motors. However, during his cross-examination, when he was specifically asked to produce documents regarding proprietorship of the firm, he admitted that his father is the proprietor of the firm. It is further contended that after a lapse of about four years from filing of the complaint, the complainant moved an application under Section 311 Cr.P.C. seeking to place on record a Special Power of Attorney, which is nothing but an attempt to fill up lacuna in the case and to fundamentally alter the nature and foundation of the complaint, which is impermissible in law. It is argued that such an exercise amounts to



permitting the complainant to improve his case after disclosure of defence, which causes serious prejudice to the petitioner. Learned counsel for the petitioner has further contended that the learned trial Court, while passing the impugned order dated 17.11.2025, has failed to appreciate the settled position of law that in case of a proprietorship concern, it is only the proprietor who can be held liable under Section 138 of the Negotiable Instruments Act, as the proprietorship concern has no separate legal entity. It is argued that a sole proprietorship firm does not fall within the ambit of Section 141 of the NI Act and the concept of vicarious liability is not attracted in such cases. In support of his contentions, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Raghu Lakshminarayanan vs. M/s Fine Tubes (2007) 5 SCC 103*, wherein it has been held that the concept of vicarious liability under Section 141 NI Act is applicable only to juristic persons such as companies and partnership firms and not to proprietorship concerns.

4. It is further contended that the learned trial Court has also failed to consider the law laid down by the Hon'ble Delhi High Court in *M.M. Lal vs. State NCT of Delhi, 2012 (4) JCC 284*, wherein it has been categorically held that a sole proprietorship firm has no separate legal identity and is merely a business name of the sole proprietor, and therefore any reference to the proprietorship firm necessarily refers to the proprietor himself. It is thus argued that in the present case, the entire complaint having been filed in the name of Chander Mohan as proprietor/authorised signatory, the subsequent attempt to introduce Aridaman Singh as the proprietor through an



application under Section 311 Cr.P.C. is legally impermissible. It is further argued that the learned trial Court has wrongly relied upon the judgment of the Hon'ble Supreme Court in *Manju Devi vs. State of Rajasthan, AIR 2019 SC 1976*, without appreciating that the said judgment pertains to the scope of Section 311 Cr.P.C. (now Section 348 BNSS) and the power of the Court to summon a witness for just decision of the case, but the said judgment does not permit a party to change the very nature of the complaint or to fill up lacuna in its case after the cross-examination has been conducted. It is submitted that the facts of the said judgment are entirely distinguishable from the present case, and therefore the reliance placed by the learned trial Court is wholly misplaced.

5. It is further contended that the application under Section 311 Cr.P.C. has been filed after a considerable delay of about four years from the institution of the complaint and only after the cross-examination of the complainant, clearly indicating that the same has been moved with an intention to overcome the deficiencies exposed during cross-examination and to fill up the lacuna in the prosecution case, which is not permissible under law. The matter being short in question and the issue involved being purely legal in nature, no notice is being issued to the respondent.

6. I have heard learned counsel for the petitioner and have perused the record of the case with his assistance. At the outset, it is to be noted that the impugned order has been passed by the learned Judicial Magistrate First Class in exercise of powers under Section 311 Cr.P.C. (now Section 348 BNSS), which empowers the Court to summon any person as a witness or to



recall and re-examine any person if his evidence appears to be essential for the just decision of the case. The scope of the said provision is wide and is intended to ensure that the Court is able to arrive at the truth and render a just decision. In the present case, it is not in dispute that the complaint under Section 138 of the Negotiable Instruments Act was filed by M/s Maitri Motors through Chander Mohan. It is also borne out from the record that during cross-examination, it came on record that the actual proprietor of the firm is Aridaman Singh and that Chander Mohan is only an authorised signatory. The application under Section 311 Cr.P.C. has been moved to place on record the Special Power of Attorney executed by the proprietor and to examine him as a witness.

7. The contention of the petitioner that allowing such an application amounts to permitting the complainant to fill up lacuna and to change the nature of the complaint does not merit acceptance in the facts of the present case. The distinction between “filling up lacuna” and “bringing on record necessary evidence” is well settled. A lacuna is an inherent defect in the case, whereas omission to bring certain material on record due to inadvertence can be permitted to be cured, if such material is essential for just adjudication. In the present case, the existence of the proprietorship concern and the relationship between the proprietor and the authorised signatory was already part of the case, though not properly articulated. The Special Power of Attorney sought to be produced is not creating a new case but is only clarifying the capacity in which the complaint has been instituted. The summoning of the proprietor as a witness would enable the Court to



arrive at the truth regarding the status of the complainant and the liability, if any.

8. Further, no prejudice is caused to the accused, as full opportunity would be available to cross-examine the additional witness and to challenge the genuineness of the documents sought to be produced. The power under Section 311 Cr.P.C. is to be exercised to advance the cause of justice and not to thwart it on technical grounds. The judgments relied upon by the petitioner regarding the liability of a proprietorship concern do not advance his case at this stage, as the said issue pertains to the merits of the complaint and the ultimate liability, which is yet to be adjudicated upon by the trial Court. The said aspect cannot be a ground to deny the complainant an opportunity to place relevant evidence on record. The reliance placed on the delay in filing the application is also not sufficient to reject the same, in view of the settled law that even at a later stage, if the evidence appears to be essential for just decision of the case, the Court is empowered to allow such an application.

8. In view of the above discussion, this Court is of the considered opinion that the learned trial Court has exercised its discretion judiciously and in accordance with law while allowing the application under Section 311 Cr.P.C. (Section 348 BNSS). The impugned order does not suffer from any illegality, perversity or material irregularity warranting interference in exercise of inherent/revisional jurisdiction.

9. Accordingly, the present petition is devoid of merit and is hereby dismissed.



10. However, it is clarified that nothing observed herein shall be construed as an expression on the merits of the case.

11. All pending applications, if any, also stand disposed of.

(MANDEEP PANNU)
JUDGE

16.04.2026

Anu

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