



2026:UHC:2767

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p>C528 No.1480 of 2025 <u>Hon'ble Alok Mahra, J.</u></p> <p>Mr. Dharmendra Barthwal and Mr. Tanmay Tiwari, Advocates for the applicant.</p> <p>2. The applicant has been arraigned as an accused in Criminal Complaint Case No. 2153 of 2017, under Section 138 of the Negotiable Instruments Act. By order dated 09.05.2025, learned Judicial Magistrate-I, Haldwani, District Nainital closed the opportunity of the applicant to cross-examine P.W.1. An application seeking recall of the order dated 09.05.2025 was thereafter preferred by the applicant, which came to be rejected vide order dated 31.07.2025 on the ground that such recall would amount to permitting the applicant to fill in lacunae in his defence.</p> <p>3. Learned counsel for the applicant submits that the applicant had, in fact, partly cross-examined P.W.1 on 08.11.2024; however, owing to unavoidable circumstances, he could not remain present thereafter. It is further submitted that immediately upon passing of the order dated 09.05.2025, the applicant approached the Court by moving a recall application and that there was no intentional or deliberate attempt on his part to delay or protract the proceedings.</p> <p>4. Heard learned counsel for the applicant and perused the record. This Court is of the view that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witness, this Court would prefer to err in favour of the applicant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of</p>



the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to the complainant is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.

5. In the considered opinion of this Court, the balance of justice would lie in affording one final opportunity to the applicant to complete the cross-examination, subject to appropriate terms so as to safeguard the interest of the complainant and to ensure expeditious disposal of the case.

6. Accordingly, the impugned orders dated 09.05.2025 and 31.07.2025 are set aside. The application moved by the applicant seeking recall of the order dated 09.05.2025 stands allowed, subject to the applicant making payment of a cost of ₹50,000/- to the complainant within a period of two weeks' from today. Learned Magistrate shall thereafter afford an opportunity to the applicant to conclude the cross-examination of P.W.1 and shall make all endeavours to expedite the proceedings.

7. The criminal miscellaneous application stands disposed of accordingly.

(Alok Mahra, J.)

17.04.2026

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