

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 1693/2023

Shristhi Buildstructure Pvt. Ltd, through Director & Authorized Signatory Ashutosh Kulshresth S/o Late Shri Nityanand Kulshresth, age 60 Year, Resident of 38, J.P. Colony, New Sanganer Road, Jaipur (Raj). At Present Address- 4-B, Green Nagar, Second Floor, Durgapura, Tonk Road, Jaipur (Raj).

-----Petitioner

Versus

Kamal Chelani S/o Late Shri Ramchandra Chelani, R/o 2/226, Jawahar Nagar, Jaipur Metropolitan (Raj).

-----Respondent

connected with

S.B. Criminal Miscellaneous (Petition) No. 1691/2023

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-----Respondent

For Petitioner(s)	:	Mr.Mohammed Anees
For Respondent(s)	:	Mr.Amit Kumar Soni

JUSTICE ANOOP KUMAR DHAND

Order

08/05/2026

1. Since common question of law and facts are involved in both the instant petitions, hence with the consent of counsel for the

parties, arguments have been heard together and both the petitions are being decided by this common order.

2. For the sake of convenience, the facts pleaded in S.B. Criminal Misc. Petition No.1693/2023 are taken into consideration.

3. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 14.02.2023, passed by the Special Metropolitan Magistrate (NI Act Cases) No.13, Jaipur Metropolitan-I by which the application submitted by the petitioner-Shristhi Buildstructure Pvt. Ltd (hereinafter referred to as "the petitioner") seeking permission to cross-examine with the complainant-Kunal Chelani (hereinafter referred to as "the complainant") has been rejected.

4. Learned counsel for the petitioner submits that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act") was submitted by the complainant against the petitioner before the Court below. Counsel submits that on account of illness of the petitioner's father, he could not appear before the concerned Court and in his absence, the cross-examination with the complainant could not be done and thereafter, the petitioner's opportunity of cross-examination with the complainant was closed on 22.06.2022. Counsel submits that thereafter, an application was submitted by the petitioner on 01.11.2022, for re-summoning the complainant for the purpose of cross-examination, however, the aforesaid application has been rejected by the Court below vide impugned order dated 14.02.2023. Counsel submits that important question of law is involved in the instant matter, hence, one last opportunity be granted to the petitioner by imposing appropriate cost.

5. Counsel submits that the petitioner assailed the aforesaid order by way of filing three different miscellaneous petitions before this Court. One of the misc. petitions, i.e., S.B. Criminal Misc. Petition No.1648/2023 was rejected by the Co-ordinate Bench of this Court vide order dated 02.11.2023, against which Special Leave to Appeal (Crl.) No(s).532/2024 was submitted by the petitioner before the Hon'ble Apex Court and the same was disposed of by the Hon'ble Apex Court vide order dated 01.03.2024, granting last opportunity to the petitioner to cross-examine with the complainant subject to depositing a cost amount of Rs.25,000/- to the complainant. Counsel submits that the petitioner is ready and willing to pay the appropriate cost amount, in case, one last opportunity is granted to the petitioner for the aforesaid purpose.

6. *Per contra*, learned counsel appearing on behalf of the complainant opposes the prayer and submits that the complaint under Section 138 of the NI Act was submitted against the petitioner way back in the month of March, 2018. After service, the petitioner appeared and thereafter, substance of accusation was recorded and since the month of August, 2020 till 22.06.2022, the petitioner has availed more than 100 opportunities for the purpose of cross-examination with the complainant. Counsel further submits that the whole and sole purpose of the petitioner was to delay the disposal of the complaint which was lying pending against him since 2018. Hence, under these circumstances, the Court below has not committed any error in passing the order impugned, which warrants any interference of this Court.

7. Heard and considered the submissions made at the Bar and perused the material available on record.

8. Perusal of the record indicates that three different complaints under Section 138 of the NI Act was submitted by the complainant against the petitioner before the Court below in the year 2018. This fact is not in dispute that several opportunities were granted to the petitioner for the purpose of cross-examination with the complainant and every time, that opportunity was not availed by the petitioner and the case was deferred from one date to another and in the meantime, four years passed and even on the day, when the case was posted on 22.06.2022, the opportunity of cross-examination was still not availed by the petitioner. Hence, under these circumstances, the Court concerned was left with no other option except to close the petitioner's opportunity of cross-examination with the complainant.

9. This fact is also not in dispute that the same order was passed in all the three complaints pending against the petitioner on the same day. The petitioner filed three different petitions before this Court assailing the order passed by the Court below. One of the misc. petitions, i.e., S.B. Criminal Misc. Petition No.1648/2023 was rejected by the Co-ordinate Bench of this Court vide order dated 02.11.2023, against which the petitioner approached the Hon'ble Apex Court by way of filing Special Leave to Appeal (Crl.) No(s).532/2024 wherein the Hon'ble Apex Court has passed the following order on 01.03.2024 as under:-

"Leave granted.

Heard the learned counsel appearing for the parties.

The respondent is the complainant in a complaint under Section 138 of the Negotiable Instruments Act, 1881. The appellant did not cross-examine the respondent, as he

remained absent. Therefore, an application under Section 311 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") was moved by the appellant before the Trial Court. The said application was rejected and the order of the Trial Court has been confirmed by the High Court in a petition under Section 482 of the Cr.P.C. filed by the appellant.

The learned counsel appearing for the respondent submitted that though the Trial Court granted opportunity from time to time to the appellant to cross-examine the respondent, on flimsy grounds, the appellant kept on asking for adjournments.

Looking to the findings recorded by the Trial Court, to an extent the learned counsel for the respondent is right. However, in the criminal complaint, an opportunity to cross-examine the respondent-complainant cannot be denied to the appellant. The appellant has deposited a sum of Rs.25,000/- (Rupees twenty five thousand) in this Court for meeting the cost of the respondent.

Accordingly, the appeal is allowed. The impugned orders are set aside. The complainant/respondent is recalled for cross-examination.

We direct the parties to appear before the Trial Court on 15th March, 2024 at 10.30 a.m.

On that day, the Trial Court will fix a date for recording cross-examination of the respondent. On the date fixed, the appellant shall appear and cross-examine the respondent.

We permit the respondent to withdraw a sum of Rs.25,000/- (Rupees twenty five thousand) deposited by the appellant towards the costs. The appeal is accordingly allowed.”

10. Once the last opportunity has been granted to the petitioner by the Hon’ble Apex Court by imposing the cost amount of Rs.25,000/-, this Court is left with no other option except to follow the view, which has already been taken by the Hon’ble Apex Court while deciding Special Leave to Appeal (Crl.) No(s).532/2024.

11. The instant criminal misc. petition stands disposed of with the following terms and conditions:

(I) The petitioner would pay a cost amount of Rs.25,000/- each to the complainant within a period of three weeks from today.

(II) The petitioner would deposit a sum of Rs.10,000/- each in the Office of Rajasthan High Court Bar Association, Jaipur, the aforesaid amount would be utilized by the Bar Association for the disbursement the Young Budding Lawyer, who are practicing for less than five years in terms of the order passed by this Court in the case of **Smt. Meena Devi & Ors. Vs. Rahul Haldiya & Ors.** while deciding S.B. Civil Miscellaneous Appeal No. 3327/2018 on 11.02.2026. The President/ Secretary of the Bar Association are directed to utilize this amount solely for the purpose of purchase of law books for the young budding Lawyers.

(III) The petitioner would plant 50 shade bearing trees in the public vicinity area. The aforesaid process would be carried out by him within a period of three weeks from today

and he would submit the proof and photographs of these shade bearing trees along-with an undertaking before the Trial Court that he would take care of these plants, till they grow and get in proper shape.

12. The reasons for passing the present order directing the petitioner to plant 50 shade bearing trees is in the interest of the public at large and for the greater public good. Planting trees as directed above, is one such initiative, which this Court considers to be appropriate, as trees, for as long as they thrive, whether for decades or centuries will continuously and silently offer numerous benefits to the city and the surrounding community. Future generations will benefit from a cleaner, fresh and oxygen-rich environment.

13. The aforesaid exercise is required to be done within the above stipulated time. In case, the order passed by this Court is complied with by the petitioner in terms of the aforesaid conditions and within the above stipulated period, one last and final opportunity shall be granted to the petitioner by the Trial Court to cross-examine with the complainant-respondent by giving a short fixed date and all endeavours shall be made to complete the cross-examination of the complainant by calling him and if because of paucity of time, the cross-examination is not completed on the said day, then the Trial Court would fix a further short date for the aforesaid purpose.

14. In case, the petitioner fails to avail the aforesaid opportunity again on the next date, no further opportunity would be granted to the petitioner for the aforesaid purpose. The Trial Court would

be at liberty to decide the pending complaints strictly in accordance with law.

15. The Trial Court is further directed to conclude the proceedings of the pending complaints expeditiously, as early as possible preferable within a period of three months from the date of receipt of the certified copy of this order, looking to the fact that the complaints are pending before the said Court since 2018.

16. It is also made clear that the Trial Court would not entertain any unnecessary and unwarranted request of adjournment to defer the matter for some other day.

17. With the aforesaid observations and directions, the criminal misc. petitions along with all applications (pending, if any) stand disposed of.

(ANOOP KUMAR DHAND),J