

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 3976/2016

Rajesh Kumar Sharma S/o Shri Harilal Sharma, aged about 37 years, R/o Nayabas, Police Station Nadbai, District Bharatpur.

-----Petitioner

Versus

Ramdayal S/o Shri Ram Prasad, aged about 66 years, R/o Nayabas, Police Station Nadbai, District Bharatpur, Rajasthan.

-----Respondent

For Petitioner(s)	:	Mr. Amit Kumar Soni
For Respondent(s)	:	Mr. N.S. Dhakar-PP Mr. Saransh Saini with Mr. Vinod Kumar Sharma

JUSTICE ANOOP KUMAR DHAND

Order

20/04/2026

1. By way of filing the present criminal misc. petition, a challenge has been led to the impugned order dated 05.05.2016 passed by the Court of Senior Civil Judge cum Additional Chief Judicial Magistrate, Nadbai, District Bharatpur (for short 'the trial court') in Criminal Case No. 283/2011 by which the application submitted by the accused respondent under Section 311 Cr.P.C. for summoning the witness-Pooranlal Lawaniya has been allowed.
2. Counsel for the petitioner submits that a complaint was filed by the complainant-petitioner (hereinafter referred to as 'complainant') against the accused-respondent (hereinafter referred to as 'accused') under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in the year 2011

wherein ample opportunities were granted to the accused for producing and recording his defence evidence. Counsel submits a document i.e. compromise was produced by the accused and the same was taken on record. Counsel submits that on 15.09.2015, he sought for further time to produce his defence evidence, hence the case was posted for 28.09.2015. Counsel submits that on the subsequent date i.e. 19.11.2015, an application was submitted by the accused for producing the defence evidence which was allowed vide order dated 19.01.2016 with a cost of Rs. 200/- and last opportunity was granted to him to produce his defence evidence and thereafter, he absconded and his bailbonds were forfeited and after his appearance, he again submitted an application under Section 311 Cr.P.C. for summoning the witness-Pooranmal Lavaniya. Counsel submits that the main purpose of the accused is to delay the disposal of the complaint submitted by the complainant against him in the year 2011, hence interference of this Court is not warranted. Counsel further submits that even otherwise, the petitioner was also not a party in the compromise which was written by Pooranlal Lavaniya, hence the said witness was not required through summoned, even then the order impugned has been passed and the same is not sustainable in the eyes of law and the same is liable to be rejected.

3. Per contra, learned counsel for the accused opposes the arguments raised by counsel for the complainant and submits that a compromise was executed between the parties on 24.08.2011 and the same was written by one Pooranlal Lavaniya which was duly signed by the petitioner. Hence under these circumstances, Pooranlal Lavaniya is a necessary witness and his evidence is just

and essential for disposal of the complaint submitted against the accused. Counsel further submits that under these circumstances, the Court below has not committed any error in passing the impugned order and the present petition is liable to be rejected.

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

5. Perusal of the record indicates that a complaint under Section 138 of the N.I. Act was submitted by the complainant against the accused in the year 2011. Perusal of the record further indicates that the trial was delayed and remained pending before the Trial Court from the year 2011 to 2015 and on 05.10.2015 the accused submitted the Form No.3 along-with documents before the trial court. On the said date, he himself denied to produce any defence evidence, hence the case was posted for final arguments on 28.10.2015. On the said date, again time was sought by the accused to defer the matter for some other date, hence the case was posted for 19.11.2015 and on the said date, an application under Section 311 Cr.P.C. was submitted by him which was opposed by the complainant. However, the said application was allowed by the trial court vide order dated 19.01.2016 with a cost of Rs.200/- and two opportunities were granted to the accused to lead his defence with a direction that no further time would be granted to him. The case was further posted on 28.01.2016 for the said purpose but no evidence was produced by the accused, hence the case was again posted on 23.02.2016 and on the said date, statements of two defence witnesses were recorded and the case was posted for arguments on 29.03.2016. It appears that in the meantime, the accused was absconded and his bail bonds

were forfeited. He appeared before the Court below on 29.03.2016 and he was granted bail and thereafter on 30.03.2016 the instant application under Section 311 Cr.P.C. was submitted for summoning the witness-Pooranlal Lavaniya and the said application has been allowed by the Court below vide impugned order dated 05.05.2016 on the ground that an agreement was executed between the parties which was duly signed by both the parties and written by said witness-Pooranlal Lavaniya.

Considering the material aspect of the matter, the Trial Court was of the view that the summoning of this witness is just and essential for decision/disposal of the case and accordingly, the impugned order has been passed and the application submitted by the accused under Section 311 Cr.P.C. was allowed.

6. Perusal of the documents annexed with the petition i.e. an agreement executed between the parties indicates that the same has been duly signed by both the sides which was written by the said witness-Pooranlal Lavaniya, hence recording of his statement is essential for disposal of the complaint.

7. The question which remains for consideration before this Court is that, inspite of availing sufficient opportunities so granted by the Trial Court , the accused has failed to avail the same and no effort was made by him for producing the said witness Pooranlal Lavaniya in the witness box. The sole object of the accused was only to delay the disposal of the complaint which is lying pending against him before the Trial Court.

8. Considering the overall facts and circumstances of the case, this Court deems it just and proper to partly allow the instant petition by imposing a cost of Rs. 20,000/- upon the accused to

pay the same to the complainant, as the delay has been caused by him to keep the complaint pending before the trial court.

9. The accused is directed to pay the aforesaid cost to the complainant within a period of four weeks from today. In case, the aforesaid amount is paid by the accused to the complainant within the above stipulated time, the witness-Pooranlal Lavaniya be summoned and his statements be recorded, by issuing a bailable warrant and all possible endeavours would be made by the Trial Court to record his statements on the date fixed by it.

10. It is made clear that the Trial Court would not entertained any unnecessary and unwarranted request of adjournment made by either side and all possible endeavours would be made by the Trial Court to decide and dispose of the complaint submitted by the complainant, expeditiously, as early as possible, as the matter pertains to the year 2011.

11. Accordingly, the instant misc. petition is partly allowed. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J