

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

S.B. Criminal Miscellaneous (Petition) No.5955/2024
URN: CRLMP / 12157U / 2024

Dr. Uma Gupta, Daughter Of Late Shri S.n. Gupta, Resident Of 11/31, Malviya Nagar, Jaipur, Through Power Of Attorney Holder Shri Avtar Narayan Gupta Son Of Late Shri S.n. Gupta, Resident Of 11/31, Malviya Nagar, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Satya Prakash Kumawat, Son Of Shri Brahamdev Kumawat, First Address- 104, First Floor, Anukampa Platina, Iscon Road, Mansarovar Extension, Kankha Ki Dhani, Jaipur 302020 Second Address- Filling Station, Bandanwada, District Ajmer , Rajasthan- 305621.
2. The State Of Rajasthan, Through Public Prosecutor.

-----Respondents

For Petitioner(s)	:	Mr. Manak Chand Jain Mr. Prayaag Jain
For Respondent(s)	:	Mr. Manvendra Singh Shekhawat, PP

JUSTICE ANOOP KUMAR DHAND

Order

15/07/2026

1. The instant criminal miscellaneous petition has been preferred against the impugned order dated 16.08.2024 passed by the Court of the Additional Sessions Judge No.2, Jaipur Metropolitan I, by which the revision petition submitted by the accused-respondent against the order dated 18.05.2023 passed by the Id. Special Judicial Magistrate N.I. Act Court, Jaipur Metropolitan I, has been allowed, and the respondent has been directed to cross-examine the complainant-petitioner, subject to the payment of cost amount.

2. Learned counsel for the petitioner submits that the accused-respondent is facing trial for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 in connection with a criminal complaint submitted by the petitioner-complainant against him. Learned counsel submits that after recording of the statement of the petitioner, several opportunities were granted to the respondent for the purpose of cross-examination with the petitioner, but he failed to do so. Hence, his opportunity of cross-examination was closed on 19.09.2022. Learned counsel submits that an application was submitted by the respondent under Section 311 CrPC for summoning the petitioner for the purpose of cross-examination. However, the said application was rejected by the learned Magistrate vide order dated 18.05.2023. Learned counsel submits that aggrieved by the aforesaid order, the respondent submitted a revision petition before the court of Id. Additional Sessions Judge No. 2, Jaipur Metropolitan I. He further submits that the order dated 18.05.2023, which was passed on the application under Section 311 Cr.P.C. is an interlocutory order, not a final order. Hence, revision petition under Section 397 Cr.P.C. is not maintainable before the Court below. In spite of above, revision petition submitted by the respondent was entertained and allowed vide impugned order dated 16.08.2024.

3. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Sethuraman Vs. Rajamanickam** reported in **2009 (5) SCC 153**.

4. No one has put in appearance on behalf of the respondent in spite of service.

5. Heard and considered the submissions made at the bar and perused the material available on the record.
6. In the matter of **Sethuraman (supra)**, the Hon'ble Apex Court has held that the order passed by the Trial Court rejecting the application submitted under Section 311 Cr.P.C. is an interlocutory order and the revision petition against such order is clearly barred under Section 397(2) Cr.P.C.
7. For ready reference, the provision contained under Section 397 are reproduced as under:-

"397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

8. A bare perusal of Sub-Section (2) of Section 397 clearly indicates that the powers of revision conferred under Sub-Section

(1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial, or other proceeding.

9. Looking to the fact that the order dated 18.05.2023 passed on the application submitted by the respondent under Section 311 Cr.P.C. is an interlocutory, hence, the revision against the said order was not maintainable. But this fact was overlooked by the learned Revisional Court while allowing and entertaining the revision petition submitted by the respondent.

10. On this count alone, the impugned order dated 16.08.2024 passed by the Revisional Court stands quashed and set aside. Accordingly, the instant criminal miscellaneous petition stands allowed.

11. Needless to observe that the respondent would be at liberty to avail the remedies available to him under the law, assailing the validity of the order dated 18.05.2023.

(ANOOP KUMAR DHAND),J