

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5982/2024

- 1. Santosh Kumar Son Of Shri Kaluram Gopalka, Aged About 51 Years, R/o Thatero Ka Mohalla, Shrimadhampur, District Sikar (Rajasthan).
- 2. Kamla Motors, Barsinghpura Road, Khandela, District Sikar (Rajasthan) Through Its Proprietor, Santosh Kumar Son Of Shri Kaluram Gopalka.

----Petitioners

Versus

Vijay Kumar Bansal Son Of Shri Santosh Kumar Bansal, Aged About 31 Years, R/o Ward No. 6 Kandela District Sikar Rajasthan.

----Respondent

For Petitioner(s)	:	Mr. Nikhil Sharma
For Respondent(s)	:	Mr. Narendra Singh Dhakar, PP Mr. Rajesh Kumar Mutha

JUSTICE ANOOP KUMAR DHAND

Order

04/05/2026

- 1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 21.08.2024, passed by the Court of Judicial Magistrate Khandela Sikar, by which the application submitted by the petitioner seeking permission to cross-examine the complainant-respondent in relation to certain documents produced before the Debt Recovery Tribunal, Jaipur (for short, 'DRT') has been rejected.
- 2. Learned counsel for the petitioner submits that misusing the signed blank cheques of the petitioner, loan was taken by the complainant-respondent from AU Finance Limited. Counsel further

submits that when the amount was not repaid, securitisation proceedings were initiated by way of filing of securitisation application by the petitioner as well as by the complainant before the Debt Recovery Tribunal. Counsel submits that at a later stage, a settlement was arrived at between the complainant-respondent and AU Finance, as the complainant-respondent deposited the entire outstanding amount and the matter was closed on the basis of the compromise arrived at between them. Thereafter, proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated by the complainant-respondent against the petitioner. Counsel submits that right from the beginning, when the petitioner received a legal notice from the complainant-respondent about the dishonor of the disputed cheque, the aforesaid settlement of the securitisation proceedings has been the defense of the petitioner. A detailed reply to the aforesaid legal notice was submitted by the petitioner wherein all these facts were mentioned. Counsel submits that with regards to the aforesaid proceedings, initiated by the complainant-respondent under the Negotiable Instruments Act, 1881, when the matter reached the stage of cross-examination of the complainant-respondent, the aforesaid application was submitted by the petitioner, seeking permission from the Trial Court to cross-examine the complainant-respondent with regards to the documents submitted before the Debt Recovery Tribunal. Counsel submits that cross-examination of the complainant-respondent, with regards to the aforesaid documents submitted by the parties before the Debt Recovery Tribunal, is essential for just decision of the case. However, this fact has been overlooked by the Court

below while rejecting the application submitted by the petitioner by passing the impugned order dated 21.08.2024. Hence, interference of this court is warranted.

3. *Per contra*, learned counsel appearing on behalf of the complainant-respondent opposed the prayer and submitted that in the application submitted by the petitioner before the Court below, no specific averment has been made by the petitioner to show which document from the proceedings before the Debt Recovery Tribunal is relevant for the purpose of cross-examination of the complainant-respondent. He further submits that a joint loan was taken by the petitioner as well as the complainant-respondent from AU Finance, but subsequently, the entire outstanding amount was repaid by the complainant-respondent to AU Finance. Hence, under these circumstances, the documents, if any, produced by the parties before the Debt Recovery Tribunal is not relevant for just decision of the instant case as the relevance of such documents has not been explained in the application. He submits that considering the overall facts and circumstances of the case, the application submitted by the petitioner has been rejected by the Court below by passing a just order which does not warrant any interference of this court and the instant petition is liable to be rejected.

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

5. Perusal of the record indicates that the petitioner is facing trial for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 on a complaint submitted against him by the complainant-respondent. When the trial

reached the stage of cross-examination, an application was submitted by the petitioner wherein it has been averred by the petitioner that the family members of the complainant-respondent had availed a loan by misusing the petitioner's blank cheques, bearing his signatures. However, when the loan was not repaid, securitisation proceedings were initiated before the Debt Recovery Tribunal wherein both complainant-respondent and AU Finance submitted their respective securitisation applications.

6. This Court has perused the application submitted by the petitioner before the Court below. The arguments which have been raised before this Court have also been mentioned in the aforesaid application. But this fact has not been mentioned as to which specific application or document is relevant for the purpose of cross-examination of the complainant-respondent by the petitioner. This Court cannot lose sight of the fact that fair trial is the fundamental right of an accused and he has every right to put his defense in the form of cross-examination of the other side.

7. Considering the overall facts and circumstances of the case, this court deems it just and proper to dispose of the instant petition, granting liberty to the petitioner to file a fresh application with clear and specific reference of the document from the proceedings before the Debt Recovery Tribunal, which is relevant for the purpose of cross-examination of the complainant-respondent.

8. In case, such application is submitted by the petitioner within a period of two weeks from today, it is expected from the Court below to decide the said application afresh, after hearing the

arguments raised by both sides, strictly in accordance with law, within a period of one month thereafter.

9. With the aforesaid observations, the instant criminal misc. petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J