



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 4363/2025
CNR: RJHC010484342025 | URN: CRLMP / 7598U / 2025

Ramesh Chand Bawari S/o Shri Mangal Sen, Aged About 56
Years, R/o 1 K 5 Sadar Patel Nagar Opposite Indian Oil Depot
Sector No 11 Udaipur

-----Petitioner

Versus

Krishan Kumar Daya S/o Late Mangilal Ji, Aged About 39 Years,
R/o Ed62 Bappa Rawal Nagar Sector 6 Hiran Magri Udaipur
Rajasthan

-----Respondent

For Petitioner(s) : Mr. Anuj Sahlot
For Respondent(s) : -

HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

27/10/2026

1. The present criminal miscellaneous petition has been filed under Section 528 of the BNSS, challenging the order dated 01.05.2025, passed by the learned Special Judicial Magistrate (N.I. Act Cases) No. 1, Udaipur, whereby the application preferred by the petitioner for summoning the income tax returns and other financial documents of the complainant came to be dismissed.
2. Learned counsel for the petitioner submits that the income tax returns of the complainant are essential for ascertaining his financial capacity to advance such a substantial amount qua which allegedly the disputed cheque was issued by the petitioner to the complainant and would be relevant for the proper adjudication of the matter. He, therefore, contends that the learned trial Court ought to have allowed the application.



3. Heard learned counsel for the petitioner and perused the material available on record.

4. This Court finds that the learned trial Court, while dismissing the application preferred by the petitioner, specifically observed that the petitioner had failed to demonstrate the relevance and necessity of the documents sought to be summoned. It observed that the petitioner had sought production of the income tax returns of the complainant for the assessment years 2011-12, 2012-13 and 2013-14, along with bank statements and loan statements for the period from 2005 to 2015, without explaining how the said documents were necessary for adjudication of the controversy involved in the proceedings.

4.1. The learned trial Court further placed reliance upon the judgment rendered by a Coordinate Bench of this Court in **Smt. Shyama Bai Vs. Ganga Ram; S.B. Criminal Miscellaneous Petition No. 1594/2017** (decided on 17.04.2017), wherein it was observed that the source of funds and income tax returns of the complainant are not subject matter of inquiry in proceedings under Section 138 of the Negotiable Instruments Act, 1881. Reliance was also placed on the judgment passed by the Delhi High Court in the case of **Guddo Devi @ Guddi Vs. Bhupendra Kumar; Criminal Revision Petition No.1246/2019** (decided on 11.02.2020) wherein the Court while considering the challenge to conviction under Section 138 of the Negotiable Instruments Act, 1881 observed that the any person violating the provisions of the Income Tax Act, 1961 would attract imposition of penalties under the said Act, however, the same does not render the debt unenforceable or precludes the lender from recovering the same.



5. True it is that the trial Court has power to summon documents at any stage of the proceedings however, it is pertinent that such power of the Court to permit a party to summon or produce documents during the course of trial is exercised judicially, keeping in view the relevance and necessity of such documents for the proper adjudication of the controversy involved.

The mere fact that certain documents may be available with a party or a third person does not, by itself, furnish sufficient ground for directing their production unless the party seeking such production is able to demonstrate their specific relevance to the issues arising for consideration in the proceedings.

6. This Court is of the opinion that although the financial capacity of the complainant may be a relevant consideration in proceedings under Section 138 of the Negotiable Instruments Act, 1881, however, the burden is upon the party to demonstrate the necessity and relevance of the particular documents sought to be summoned. The relevance of such evidence cannot be presumed merely because the proceedings arise out of a complaint under Section 138 of the Negotiable Instruments Act, 1881.

6.1. The power to summon documents cannot be invoked in a routine or roving manner, nor can the process of trial be permitted to be enlarged by requiring the production of documents whose relevance has not been satisfactorily established. The requirement of a fair opportunity to defend oneself does not dispense with the obligation of the applicant to demonstrate that the material sought to be brought on record has a legitimate bearing on the questions involved in the proceedings. In the absence of the same, the rejection of the application cannot be construed as curtailing the



petitioner's right to lead a defence, rather, it represents an exercise of judicial discretion based upon the material placed before the learned trial Court.

7. This Court is of the considered opinion that the learned trial Court has considered the submissions advanced by the petitioner and assigned reasons for rejecting the application and the petitioner has failed to make out any ground warranting interference by this Court. Thus, this Court finds no illegality or perversity in the impugned order warranting interference in the exercise of its inherent jurisdiction.

8. In view of the discussion made above so also considering the fact that the proceedings are pending before the learned trial Court since the year 2015, in the peculiar facts and circumstances of this case, this Court is not inclined to entertain the present criminal miscellaneous petition. The same is accordingly **dismissed**.

9. Pending application(s), if any, also stand(s) disposed of.

(SUNIL BENIWAL),J

Crt_13 (1954)
D-A/10
Amar Purohit