HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 8216/2025
CNR: RJHC021103602025 | URN: CRLMP / 18818U / 2025

Nikhil Gupta S/o Shri Nandlal Gupta, Aged About 40 Years, R/o Brothers Lal Kothi, Kesarganj, Chatai Mohalla, Ajmer.

----Accused-Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor

---Respondent No.1/State

2. Dilip Kumar S/o Shri D.M. Thadani, R/o 19, K.E.M. Padav, Police Station Clock Tower, Ajmer Firm Dalumal Dilip Kumar.

----Respondent No.2/Complainant

For Petitioner(s)	:	Mr. Jitendra Choudhary, Adv.
For Respondent(s)	:	Mr. N.S. Dhakar, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

03/08/2026

1. By way of this instant Cr. Misc. Petition under Section 528 of BNSS, the petitioner has challenged the order dated 30.10.2025 passed by learned Additional District and Sessions Judge No.4, Ajmer in Criminal Revision No.218/2025 by which learned Revisional Court dismissed the petition preferred on behalf of the petitioner and affirmed the order dated 02.06.2025 passed by Special Judicial Magistrate (N.I. Act Cases) No.3, Ajmer in Criminal Case No.3500/2017 whereby, learned trial Court dismissed the

application under Section 311 of Cr.P.C. filed by the petitioner for recalling the complainant for his cross-examination.

2. Learned counsel for the petitioner submits that petitioner is facing criminal trial for the offence punishable under Section 138 of the Negotiable Instruments Act. He submits that although earlier an opportunity to cross-examine the complainant was granted subject to cost of Rs.1,000/-, but the petitioner could not avail of the said opportunity due to unavoidable circumstances as petitioner's counsel was out of station and in these circumstances, learned trial Court closed the right of the petitioner to cross-examine the complainant. Counsel submits that for just decision of the case, the cross-examination of the complainant is very essential and if prayer of the petitioner is not accepted and cross-examination of the complainant is not allowed to be conducted, the petitioner would not be able to defend his case properly and serious prejudice would be caused to him. He therefore, prays that in the interest of justice, the petitioner may be given one opportunity to cross-examine the complainant.

3. Per contra, learned Public Prosecutor opposes the submissions made by counsel for the petitioner.

4. Having regard to the overall facts and circumstances of the case; considering the submissions made by learned counsel for the parties and in the interest of justice, the petitioner is given one last opportunity to cross-examine the complainant subject to payment of cost to the complainant.

5. Accordingly, the instant Criminal Misc. petition is allowed and the impugned orders dated 30.10.2025 and 02.06.2025 passed by

the courts below are hereby quashed and set aside. The petitioner is granted one last opportunity to cross-examine the complainant subject to payment of cost of Rs.7,000/- to the complainant before the learned trial Court. The trial Court shall fix a date in the matter for the purpose of cross-examination of the complainant by the petitioner and shall summon the said witness accordingly. On that date, the petitioner shall make payment of cost to the complainant.

6. It is made clear that only one opportunity shall be given to the petitioner for the purpose of cross-examination of the complainant. In case, the petitioner does not make the payment of the cost to the complainant or fails to complete the cross-examination in one chance, as directed above, the present order shall lose its efficacy.

7. This Court is cautious of the fact that the present order has been passed without affording an opportunity of hearing to the respondent/complainant, while keeping in mind that it may result in further delay in culmination of trial. If the respondent/complainant is dissatisfied with the present order or does not accept the cost imposed upon the petitioner by this Court, he would be at liberty to seek recall of this Court and in that eventuality, the learned trial Court shall not pass the final verdict.

8. The petitioner is directed to place a copy of this order before the trial Court for necessary compliance.

9. Considering the fact that the case has been pending since 2017 and upon acceptance of cost by the complainant as imposed

by this order upon the petitioner, learned trial Court is requested to expedite the trial and make all endeavor to conclude the trial preferably within a period of three months from the date of receipt of certified copy of this order, if there is no legal impediment in continuation of the proceedings.

10. Stay Application and pending application, if any, stand disposed of.

(ANIL KUMAR UPMAN),J

27/MADAN