HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 902/2026
CNR: RJHC020130332026 | URN: CRLMP / 2014U / 2026

Rambilash Saini Son Of Shri Durga Prasad Saini, Resident Of Manak Ram Ki Dhani, Saini Nagar Tehsil Nawalgarh District Jhunjhunu (Raj.)

----Petitioner

Versus

Mukesh Kumar Son Of Shri Makhan Lal, Resident Of Near Nagarpalika, Ward Number 10, Nawalgarh, Tehsil Nawalgarh, District Jhunjhunu (Raj.).

----Respondent

For Petitioner(s)	:	Mr. Aditya Matolia, Adv.
For Respondent(s)	:	

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

28/07/2026

1. Instant Criminal Misc. Petition under Section 528 of BNSS has been filed by the petitioner challenging the order dated 28.01.2026 passed by learned Addl. Chief Judicial Magistrate, Nawalgarh, Jhunjhunu in Criminal Complaint No.300/2018 whereby the petitioner's application for summoning the bank statements and business account records of the complainant has been dismissed.

2. Learned counsel for the petitioner submits that the complainant-respondent filed a complaint case under Section 138 of the N.I. Act against the petitioner before the learned trial Court in respect of dishonour of cheque No.958814 dated 17.07.2018 for a sum of Rs.10,00,000/-. Upon taking cognizance, the learned trial Court summoned the petitioner. During the course of trial, the complainant, in his examination-in-chief deposed that the alleged loan amount had been advanced partly from his personal savings

and partly from the business account of Karuna Shoes, which is registered in the name of his father.

3. Counsel further submits that subsequent to the complainant’s evidence, the petitioner moved an application before the learned trial Court seeking production of the complainant’s bank statements as well as the bank account records and ledger books of Karuna Shoes for the period 2017 to 2019. However, the learned trial Court, vide order dated 28.01.2026, dismissed the said application on the ground that it had been filed merely with the intent to delay the proceedings.

4. Counsel submits that the learned trial Court has committed grave error in dismissing the petitioner's application. It is submitted that the complainant's income tax returns do not disclose the alleged loan transaction of Rs.10,00,000/- or sufficient cash-in-hand to support such advancement. It is further contended that the complainant himself has deposed that the amount was arranged from his personal savings as well as the business account of Karuna Shoes, therefore, the bank statements and ledger books of the said business are material and relevant for testing the veracity of his version and for effectively rebutting the statutory presumption under Section 139 of the N.I Act. Counsel submits that in a case involving an alleged high-value cash loan, the complainant’s financial capacity and the source of funds assume considerable significance. It is, therefore, argued that the impugned order is unsustainable in law and deserves to be quashed, and set aside with a direction to the learned trial to summon the aforesaid documents.

5. I have considered the submissions and perused the impugned order.

6. Perusal of the impugned order reveals that the petitioner and the complainant were admittedly known to each other and loan was advanced to the petitioner by the complainant to meet his family necessities, against which the petitioner issued cheque No.958814. The record further indicates that although the petitioner moved an application seeking production of the complainant's bank statements and the ledger books of *Karuna Shoes*, the application did not specifically raise any plea disputing the complainant's financial capacity to advance the alleged loan. The learned trial Court has observed that, insofar as the prayer for summoning the ledger books of *Karuna Shoes* is concerned, no material had been placed on record to prima facie establish that the alleged loan amount had been advanced either from the earnings of the said business or through its bank account. In the absence of any such foundational material, the learned trial Court found no legal justification for directing production of the said records. The trial Court has further recorded that the complainant's income tax records had already been summoned pursuant to an earlier application and that the subsequent application seeking additional financial records appeared to have been filed only with a view to delaying the trial proceedings.

7. In **Ashok Singh versus State of Uttar Pradesh & Anr.,** reported in **2025 SCC OnLine SC 706,** Hon'ble Supreme Court observed as under:

> "21. One of the grounds, which weighed heavily with the High Court to acquit the respondent no.2 was that

the appellant was unable to prove the source of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) given to the respondent no.2 as loan. Admittedly, the signature on the cheque is of the respondent no.2 himself. The decision in **Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106** can be profitably referred to:

> ***'18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.***
> *19. In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the appellant accused, the question for consideration is as to whether the appellant-accused has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard,* ***significant it is***

***to notice that apart from making certain suggestions in the cross-examination, the appellant-accused has not adduced any documentary evidence** to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant.*

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*20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. **The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the***

> ***factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.*** *The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs 22,50,000 and seven cheques being of Rs 3,00,000 each leading to a deficit of Rs 1,50,000, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs 22,50,000) was distinctly stated by the appellant accused in the aforesaid acknowledgment dated 21-32017.'*
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> *(emphasis supplied)*

22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to

make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such stand, more so when respondent no.2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in **M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059**, we opined:

> *'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the***

present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v Narayan Dass Mahant, (2022) 6 SCC 735****: '10. The trial court and the first appellate court have noted that* ***<u>in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider</u>***

carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.'

(emphasis supplied)' (underlining in original; emphasis supplied by us in bold)

8. Having considered the submissions advanced and examined the material available on record, this Court finds no infirmity in the order passed by the learned trial Court. The petitioner sought production of the complainant's bank statements and the ledger books of *Karuna Shoes* on the premise that such documents were necessary to challenge the complainant's financial capacity to advance the alleged loan. However, the application filed before the trial Court did not lay any factual foundation or specifically dispute the complainant's financial capacity to lend the amount in question. In the absence of such a foundational plea supported by prima facie material, the trial Court was justified in declining the prayer for summoning the said documents. The law is well settled that once the execution of the cheque is admitted or proved, the statutory presumptions under Sections 118 and 139 of the N.I Act operate in favour of the complainant as reiterated by the Hon'ble Supreme Court in **Ashok Singh (Supra)**, the complainant is not required, at the threshold to establish the source of funds or his financial capacity to advance the loan. The burden initially rests upon the accused to rebut the statutory presumption by bringing on record facts and circumstances constituting a probable defence. Only where the accused raises a credible challenge to the

complainant's financial capacity, supported by cogent material either through independent evidence or by eliciting admissions in cross-examination, does the burden shift upon the complainant to establish his financial resources.

9. In the present case, apart from seeking production of financial records, the petitioner has neither placed any independent material nor demonstrated any circumstance capable of rebutting the statutory presumption. The request for summoning the complainant's financial documents, in the absence of any prima facie material indicating lack of financial capacity, amounts to a roving and fishing inquiry, which is impermissible in law. The trial Court has also noticed that the complainant's income tax records had already been summoned and no material was placed to establish the relevance of the ledger books of Karuna Shoes to the alleged transaction.

10. In view of the settled legal position and the facts of the case, this Court is of the considered opinion that the learned trial Court has exercised its discretion in accordance with law and has passed a well reasoned order warranting no interference in exercise of the inherent jurisdiction of this Court.

11. Hence, the Criminal Misc. Petition is devoid of merit and is hereby dismissed.

12. The stay application and pending application(s), if any, also stand dismissed.

(ANIL KUMAR UPMAN),J

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