

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

O R D E R

S.B. Criminal Miscellaneous Application No.686 of 2009.

IN

S.B. Criminal Miscellaneous Petition No.2394 of 2008

M/s. General Motor Finance, Jaipur

VERSUS

The State of Rajasthan and Others

Date of Order        ::::        30/04/2009.

**Hon'ble Mr. Justice Bhanwaroo Khan**

Mr. J.P. Gargey, Counsel for the Applicant/Petitioner  
None present for the Non-applicant/Respondents

By the Court :

This miscellaneous application, under Section 482 of the Code of Criminal Procedure, 1973, has been submitted by the applicant-petitioner with the averments that while passing the order dated 16.01.2009 by this Court an opportunity was given to him to produce his evidence on the date fixed for by the learned trial Court.

The petitioner is facing criminal charges for commission of the offence under Section 138 of the Negotiable Instruments Act, 1881.

The Court looking to the adjournments and the reasons assigned by the petitioner, vide order dated 28.01.2009 gave an opportunity to the petitioner to lead his defence evidence on the date fixed for by the learned Trial Court.

The learned Trial court fixed the date for the evidence of the petitioner-accused on 06.03.2009. The order-sheets, so submitted by the learned counsel reveal that there was not any witness on the said day, but the accused-petitioner presented himself and informed the Court that the witnesses are present, whereas the Court stated that thereafter neither the petitioner nor any of his witness was present. The case was called time and again till 4.30PM, however, last opportunity was also given to the petitioner to produce the witness. But after passing its order, the accused-petitioner presented himself at about 4.45PM, without there being any witness.

Learned counsel for the applicant-petitioner has submitted an affidavit stating therein that his nephew because of electrocution through the high-tension cable died on 05.03.2009 and his funeral took place on that day. After attending funeral, he has presented himself. This version given by the petitioner is contrary to what

the order-sheets of the trial Court dated 06.03.2000 reveal. The fact of death should have been in the mind of the petitioner when he was presented before the trial Court in the morning, but he did not inform about the same to the trial Court and at the time of closing of the Court at about 4.45PM, he submitted this application. This means that the petitioner was not having the clear and bonafide intention. There was not any witness present before the Court to lead evidence in his favour. The last opportunity was also provided to the petitioner on 28.10.2009 by this Court on the date fixed for by the learned trial Court. No specific reasons and explanation is coming forth from the side of the petitioner-accused about the non-production of the evidence on the date fixed for by the trial Court.

There is no merit in this miscellaneous application and the same deserves to be dismissed.

Consequently, this miscellaneous application stands dismissed, as indicated above.

**(Bhanwaroo Khan) J.**

