



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

S.B. Criminal Misc(Pet.) No. 1527/2026

Arvind Kumar S/o Jawaharlal Jangid, Aged About 46 Years,
Patrakar Colony, Jodhpur.

----Petitioner

Versus

Smt. Namita W/o Shri Arvind Kumar, Aged About 28 Years, D/o
Shri Bhanwarlal, R/o 399, Gali No.12, Milkman Colony, Pal Road,
Jodhpur, Rajasthan.

----Respondent

For Petitioner(s) : Mr. Parvej Moyal

For Respondent(s) : Mr. Chirag Keshwal

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU
Order

06/04/2026

The present criminal miscellaneous petition has been filed by the petitioner under Section 528 BNSS, challenging the order dated 05.02.2026 passed by the Family Court No. 1, Jodhpur Metro in Criminal Case No. 1/2022, whereby the application filed by the petitioner under Section 94 BNSS was rejected.

Learned counsel for the petitioner submits that the petitioner is the husband of the complainant, and the application for maintenance has been filed by the complainant-wife. It is submitted that after the evidence of the complainant was recorded, the defence evidence of the petitioner stood concluded. Thereafter, the present application under Section 94 BNSS was filed stating that the complainant-wife is working as a Nurse at Vyas Medicity and Super Speciality Hospital, Jodhpur, and is earning approximately Rs. 80,000/- per month.

It is further submitted that the petitioner came to know about this fact subsequently and, upon visiting the said hospital



and making inquiries, learned that the complainant has been working there for a considerable period. However, the complainant has not disclosed this fact before the Court, though the same is crucial for proper adjudication of the maintenance proceedings.

Learned counsel further submits that the complainant cannot be permitted to conceal her income. When the petitioner approached the hospital, being a private institution, it refused to provide any information regarding the complainant's employment without her consent. It is contended that there is no other means available to the petitioner to obtain such information, and therefore, the rejection of the application by the learned trial Court on the ground that the petitioner had not produced supporting documents is unsustainable. It is argued that if such documents were already in possession of the petitioner, there would have been no necessity to file an application under Section 94 BNSS.

Per contra, learned counsel for the complainant opposed the submissions and argued that the application was filed at the stage of final arguments and was rightly rejected on that ground. However, he neither admitted nor denied the fact of the complainant-wife's employment.

This Court has considered the submissions advanced by learned counsel for the petitioner. Section 94 of the BNSS provides that whenever any document or thing is necessary or desirable for the purposes of any investigation, inquiry, or trial, the Court may issue appropriate directions for its production.





Reliance can be placed on **State of Orissa v. Debendra**

Nath Padhi reported in 2005 (1) SCC 568 has held that-

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. 28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation, Inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

(emphasis supplied)

Thus, the expression "necessary or desirable" occurring in Section 94 BNSS (Section 91 Cr.P.C.) is to be construed with reference to the stage of the proceedings. At the stage of evidence, the Court is fully competent to exercise its powers under the said provision if





the documents sought are necessary or desirable for a just and proper adjudication of the case.

The accused-non-complainant has right to defend his case and the same consists of right to lead the defence evidence by examining witnesses and producing documents. Therefore, accused/non-complainant is entitled to exercise his right by compelling the complainant or third party to produce the documents or things in their possession or custody.

In the present case, the proceedings pertain to maintenance, and the petitioner is seeking the documents of service and income of the complainant-wife, which undoubtedly a material factor for adjudication. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in **Rajnish v. Neha (2020 INSC 631)**, wherein it has been categorically held that both parties are under a mandatory obligation to make full and frank disclosure of their income, assets, and liabilities in maintenance proceedings. And further any party may also seek production of relevant documents from the opposite party.

In the present case, as submitted, the petitioner made bona fide efforts to ascertain the income of the complainant; however, such information could not received. The respondent-wife has not disclosed any fact about her service. The petitioner has specifically alleged that she is working in Vyas Medicity. Hence, in such circumstances, the petitioner sought the intervention of the learned trial court for summoning of all relevant records from Vyas Medicity. When nothing was provided by the hospital, certainly the





petitioner had no option but to seek such information through the Court by filing an application under Section 94 BNSS. Since the hospital in question is a private institution and has declined to furnish information, the provisions of Section 94 BNSS are clearly attracted.

The documents sought by the petitioner are relevant and have a direct bearing on the fair adjudication and are certainly necessary and desirable for the purpose of trial. The rejection of the application by the learned trial Court on the ground that burden is upon the petitioner to file the documents is unsustainable. If the petitioner had access to such documents, there would have been no need to invoke Section 94 BNSS.

In view of the above, this Court is inclined to interfere in the matter.

Accordingly, the criminal miscellaneous petition is allowed. The order dated 05.02.2026 is quashed and set aside. The application filed by the petitioner under Section 94 BNSS is allowed. The learned trial Court is directed to seek necessary information and relevant documents from Vyas Medicity and Super Speciality Hospital, Jodhpur, regarding employment of respondent and her financial emolument/salary.

(BALJINDER SINGH SANDHU),J

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