



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

S.B. Criminal Miscellaneous (Petition) No. 5778/2026
CNR: RJHC010684222026
URN: CRLMP / 10265U / 2026

Sushma Dayal W/o Jitendra Kumar Dayal, Aged About 57 Years,
Proprietor Salasar Logistics, R/o B-501, Silver Apartment, New
Vidhya Nagar, Sector No. 4, Manva Kheda, Udaipur, Rajasthan

-----Petitioner

Versus

Praveen Lodha S/o Fateh Singh, Proprietor Sh. Rajendra Suri
Travels, R/o 94-A, New Fatehpura, Udaipur Rajasthan

-----Respondent

For Petitioner(s) : Mr. Muktesh Maheshwari
Mr. Gaurav Ranka
For Respondent(s) : Mr. Sameer Pareek, PP
Mr. Saurabh Rajpurohit, for the
complainant

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU
Order

16/07/2026
REPORTABLE

1. The present petition has been filed being aggrieved against order dated 30.06.2026, whereby the application filed by the petitioner seeking summoning of original record has been rejected.
2. The Brief facts of the case are that the respondent instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the competent Court at Udaipur alleging dishonour of Cheque No.33010963 dated 05.01.2017 for a sum of Rs.70,46,032/-. The petitioner, alleging that the respondent had misused the cheque and committed various illegal acts, lodged FIR No.114/2017 at Police Station Hiran Magri, Udaipur. Upon completion of investigation, the Investigating Agency filed a



charge-sheet against the respondent, which was registered as Criminal Case No.2834/2019 before the Court of the learned Additional Chief Judicial Magistrate No.4, Udaipur. During the course of investigation, the Investigating Agency seized and collected various original documents, including the original cheque-book counterfoil containing the respondent's handwriting and endorsements, the original Forensic Science Laboratory (FSL) Report etc,. Since the aforesaid original documents constituted material evidence for confronting the respondent during his cross-examination in the complaint case under Section 138 of the Negotiable Instruments Act, the petitioner moved an application dated 22.05.2026 before the learned Special Judicial Magistrate, N.I. Act Cases No.5, Udaipur seeking summoning of the original judicial record of Criminal Case No.2834/2019. The petitioner specifically pleaded that although certified copies of certain documents had already been placed on record, the originals were indispensable for effectively confronting the respondent with his handwriting, signatures and endorsements appearing on the cheque-book counterfoil and with the scientific opinion contained in the FSL Report. It was further pointed out that the original judicial record was then lying before the learned Commercial Court, Udaipur in Civil Case No.201/2018 pursuant to the directions of this Court, and therefore, the record be summoned only for the limited purpose of cross-examination and thereafter returned to the concerned Court.

3. The learned Trial Court, vide order dated 30.06.2026, rejected the petitioner's application holding that the original





judicial record had already been summoned by the Commercial Court pursuant to the directions of the High Court and summoning the same in the present proceedings would unnecessarily delay the trial and amount to overreaching the directions of the High Court. The learned Trial Court further observed that certified copies of the documents already available on record were sufficient, that no adequate ground existed for summoning the original record, and that the application had been filed only to delay the proceedings. Accordingly, the application was dismissed with costs of Rs.5,000/-.

4. Learned counsel for the petitioner submits that during the course of investigation of the FIR, after obtaining the FSL report, it was found that the cheque and its counterfoil had been interpolated. Thereafter, a charge-sheet was filed, and the criminal case is presently pending trial. It is further submitted that, in respect of the very same cheque, the complainant has also instituted proceedings under Section 138 of the Negotiable Instruments Act, which, according to the prosecution case in the criminal proceedings, is based upon a forged cheque. The proceedings under Section 138 of the Negotiable Instruments Act are presently at the stage of the complainant's evidence. It is submitted that at this stage, the accused has filed an application seeking summoning of the original record of the criminal case so that the same may be put to the complainant during his cross-examination in support of the defence.

5. Learned counsel for the petitioner states that the same is the only defence available to him and if the cheque itself is forged,



nothing else is required to be gone into, especially, when FSL has been received and criminal case is pending. It is submitted that the complainant has to be confronted with the original record in the cross-examination and the photocopy or certified copy would not serve the purpose when the original record is available.

6. It is further stated by the petitioner that regarding the same transaction, one suit for money recovery before the commercial court is pending wherein the same record of criminal case was required and the same was summoned by the commercial court as per directions of this Hon'ble Court passed in S.B. Civil Writ Petition No.21679/2025. The writ court had directed that since in the commercial court matter arises out of the same dispute, certainly record of criminal case is necessary during the course of examination of the witness.

7. It is stated that the learned court below has wrongly rejected the application of the petitioner on the ground that the record has been sent to the commercial court as per the directions of Hon'ble High Court and it would not be appropriate to summon the record. It is stated that there is no reason for not calling of original record as the same falls within the purview of court under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 91 of the Code of Criminal Procedure, 1973). He, therefore, states that the order of learned trial court is not sustainable.

8. Counsel present for the respondent/complainant states that in the present case the learned trial court has already ordered the certified copy to be produced and hence there is no necessity for



calling of original record and there is no illegality in the order dated 30.06.2026. He further submits that the record is already before the commercial court and it is a target case hence calling of the record would hamper progress of trial before commercial court and will amount to over-reaching the order of the Hon'ble High Court.

9. This Court has considered the arguments raised by learned counsel for the parties and has gone through the order impugned.

10. The factual position as narrated above is not disputed by the counsel for the complainant. In the present case, the only question remains is that whether the trial court is required to call for the record and whether the reasons for rejection are justifiable. The main reason for rejection of application by the learned trial court is that the record has been summoned by the commercial court in view of the directions of Hon'ble High Court and hence the trial is going on and calling of the record would hamper the same.

11. This Court finds that once the trial is proceeding under Section 138 NI Act and original record is required for trial, specially in the circumstance that the entire case is depending upon the cheque which has been found to be interpolated in the criminal proceedings, necessarily the accused has a right to call for the same for effectively confronting the witness and to put up his defence. Once the original record is available and the matter pertains to interpolation in the cheque and counter-foil, certainly the original cheque has to be put across to the complainant in the cross-examination and the same purpose cannot be solved by



submitting photocopy or the certified copy. Therefore, it is the right of the petitioner to put up his defence and best opportunity is required to be given to him. Once the investigation is already in his favour, there is no reason to deny him this opportunity, as denying of opportunity would certainly prejudice his defence.

12. So far as the issue relating to sending of record to the commercial court by the orders of this Court, this Court finds that the trial in the present case as well as in commercial court is going on. Both the trials are equally at par. The record in present case is required in both the trials and is to be utilized for fair trial in reaching to a just conclusion. Just because the record has been sent for another trial, the petitioner cannot be left to suffer. The original record is required for just and proper decision of the this case as well.

13. Section 94 of BNSS, gives power to the trial Court to summon the document or other things which are necessary for the purpose of inquiry. It is well settled that the right to a fair trial includes the right of the accused to have access to such materials as are necessary for an effective defence and meaningful cross-examination of prosecution witnesses. Denial of access to relevant statements or documents in the custody of the authorities, which have a direct bearing on the defence, would cause serious prejudice and impair the fairness of the trial. The accused cannot be deprived of such material merely on the ground that parallel proceedings may be affected.

14. The Hon'ble Apex Court in ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568***, while delineating the scope and



ambit of the powers under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 91 of the Code of Criminal Procedure, 1973) , held as under:—



“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.

26. Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma v. CBI [(2000) 5 SCC 679 : 2000 SCC (Cri) 1014] . In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] . The contentions based on Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] have been noticed in para 4 as under: (SCC p. 682)

“4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] laying emphasis on the fact that the very learned Judge in the High Court has taken a different view in such



matters, in the decision reported in Ashok Kaushik v. State [(1999) 49 DRJ 202] . Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings."

27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the 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."

15. The application filed by the petitioner seeking summoning of the original record would fall within the ambit of Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 91 of the Code of Criminal Procedure, 1973) .In view of the law laid down by the Hon'ble Apex Court in **Debendra Nath Padhi (supra)**, the width of the powers under the said provision



is unlimited. However, there are inbuilt and inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of the proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object.

16. The first and foremost requirement of Section 94 BNSS (91 CrPC) is that the document sought to be summoned should be necessary or desirable, and if this condition is fulfilled, the same has to be looked into to arrive at a just and fair conclusion in the trial.

17. In the present case, the facts that emerge from the above leave no manner of doubt about the necessity and desirability of the documents. The case is based upon the cheque, which, during the course of investigation, was found to be interpolated, and hence the same goes to the root of the matter and affects the very sustainability of the case. Refusing to call for such documents/ record would result in injustice to the petitioner, apart from the fact that the learned Trial Court would not be able to arrive at a just and fair conclusion in the absence of the same.

18. In such circumstances, the balance has to be maintained between both the trials. In view of the same, this Court finds that the reason for rejection given by the learned trial court is not proper. If the record was required for the trial, certainly necessary directions were to be issued. Hence, this Court allows the present criminal misc. petition.

19. The order dated 30.06.2026 is set aside.



20. The following directions are being passed in view of the fact that the trial in both the courts is not hampered.

(i) This Court finds that both the courts are situated within the same District Court campus at Udaipur. Hence, there is no issue of the record being brought from another place. Further the next date in the case is fixed on 20.07.2026. On that particular day the record of Criminal case no. 2834/2019 would be called for by the learned trial court and the same would be sent by the commercial court for recording of evidence on that particular day and if the evidence is not concluded on that day, the same would be retained and the evidence would continue on daily basis.

(ii) As soon as the evidence of complainant is over, the record of the case would be sent back by the NI court forthwith to the commercial court, while retaining the certified copies of the documents.

(iii) Needless to say that if any dates are clashing within the commercial court and NI Court and the record is required in both the cases, the Court shall adjust the dates accordingly. However, if the record is not required, the commercial court shall proceed in accordance with law.

21. All pending applications, if any, shall also stand disposed of.

(BALJINDER SINGH SANDHU),J

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