



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

S.B. Criminal Misc. Petition No.304/2017

Indra Singh s/o Tej Singh Babel, r/o Saheli Nagar, Udaipur, District
Udaipur (Raj.).

-----Petitioner

Versus

State of Rajasthan

-----Respondent

For Petitioner(s) : Mr.Naman Mohnot for Mr.Farzand Ali

For Respondent(s) : Mr.V.S.Rajpurohit PP for the State.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

27/07/2017

1. This criminal misc. petition under Section 482 Cr.P.C. has been preferred against the order dated 17.11.2014 passed by learned Additional Chief Judicial Magistrate No.3, Udaipur in Criminal Regular Case No.144/2004 (1960/2015), whereby the application filed by the petitioner under Section 91 Cr.P.C. has been rejected. The petitioner challenged the order rejecting application by way of filing revision petition, but the same has been dismissed on account of maintainability vide order dated 06.12.2016 passed by learned Additional Sessions Judge No.5, Udaipur in Criminal Revision No.24/2016. The offences alleged are 406, 467, 468, 471, 420 and 120-B IPC.



2. Learned counsel for the petitioner has made a strong point that if no case is made out against the petitioner, then compelling production of certain documents under Section 91 Cr.P.C. is a right opportunity for him as an accused person.

3. Learned Public Prosecutor however, opposed the submissions of the learned counsel for the petitioner on the ground that the petitioner shall have ample opportunity to compel production of witnesses as well as documents under Section 243 Cr.P.C.

4. Section 91 Cr.P.C. reads as under:-

"S. 91. Summons to produce document or other thing.-(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-



(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

5.

Section 243 Cr.P.C. reads as under:-

"S.243. Evidence for defence.-(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub- section (2), require that the reasonable expenses incurred by the witness in



attending for the purposes of the trial be deposited in Court."

6. After hearing the learned counsel for the parties as well as perusing the record of the case, this Court is of the opinion that Section 243 Cr.P.C. is the prescribed procedure for the defence and all witnesses as well as documents can be compelled to be produced for the purpose of examination and cross-examination, and therefore, the petitioner shall not be prejudiced on account of denial of compelling of documents or witnesses at the stage of Section 91 Cr.P.C.

7. However, this Court has noted the argument of learned counsel for the petitioner that speedy trial is a fundamental right and since the petitioner is facing trial for last eighteen years, he deserves to be protected from the agony of prolonged trial. Thus, while denying any interference in the impugned orders, this Court deems it appropriate to direct the learned court below to conduct speedy trial and conclude the same expeditiously.

8. With the aforesaid observations and directions, the present misc. petition stands disposed of.

(DR. PUSHPENDRA SINGH BHATI)J.

Skant/-