RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Revision Petition No. 961/2025
CNR: RJHC010677072025 | URN: CRLR / 2280U / 2025

Hanuwant Singh Sisodia S/o Roop Singh Ji, Aged About 49 Years, Rampura Bhatian, Osian, District Jodhpur, Rajasthan

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

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For Petitioner(s) : Mr.S.K. Verma
For Respondent(s) : Mr. Ramesh Dewasi, Dy.GA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

03/11/2026

1. The petition challenges the observance and order dated 16.04.2025 passed by the learned Addl. Sessions Judge, Kushalgarh, District Banswara in Sessions Case No.61/2022, whereby a notice under Section 350 Cr.P.C. was issued to the petitioner calling upon him to show cause as to why appropriate proceedings should not be initiated against him. Simultaneously, a warrant of arrest was issued to secure his presence. The learned Trial Court further directed that payment of salary to the petitioner be withheld until the next date of hearing or until further orders. It was also directed that a sum of Rs.10,000/- be deducted from his salary and remitted to the Court, with a corresponding endorsement to be made in his service record.

2. Briefly stated, the facts giving rise to the present petition are that the petitioner, a Police Inspector, was posted as Station House

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Officer of a Police Station. In connection with a Sessions Case, processes were issued by the learned Trial Court for securing his presence for recording his testimony, as he was the Investigating Officer of the case. Thus, the petitioner was cited as Prosecution Witness No.23. However, despite issuance of process, he failed to appear before the learned Trial Court when called upon to depose. It is also noticeable that the processes issued to him were not returned to the Court, either with a report of service or non-service.

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2.1. On 16.04.2025, when the matter was taken up by the learned Trial Court, it was noticed that the petitioner, being Witness No.23, along with certain other witness No.24 Kailash Chandra, had not appeared. It was further observed that the notices issued to them had not been received back, either served or unserved. Taking note of the aforesaid circumstances, the learned Trial Court initially directed issuance of notice to the petitioner, in his capacity as SHO, and also ordered issuance of fresh process for securing the presence of Witness No.24.

2.2. However, in the succeeding paragraph of the very same order, the learned Trial Court proceeded to record certain observations on the basis of information furnished by the learned Public Prosecutor. It was apprised to the Court that, pursuant to the directions of the Court, the learned Public Prosecutor had contacted the petitioner over his mobile phone and informed him that his presence was required for recording his statement as a witness. According to the version placed before the Court, the petitioner allegedly declined to comply with the request and

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expressed his unwillingness to honour the information conveyed to him over the telephone.

2.3. Apparently, the aforesaid response, as reported by the learned Public Prosecutor, seems to have weighed heavily with the learned Trial Court. Taking exception to the alleged conduct of the petitioner, the learned Judge proceeded to make serious observations regarding his conduct and the importance of his appearance as a witness, particularly in view of the fact that his testimony had remained unrecorded for a considerable period.

2.4. The learned Trial Court thereafter proceeded to issue a warrant of arrest against the petitioner for securing his presence and directed that the same be forwarded to the concerned SHO with instructions to produce him before the Court after arrest. Not stopping there, the learned Trial Court further directed deduction of an amount of Rs.10,000/- from the petitioner's salary and its remittance to the Court. A consequential direction was also issued for making an appropriate endorsement in his service record.

2.5. The learned Trial Court went a step further and observed that the petitioner was not suitable for being deployed as an Investigating Officer and, accordingly, directed the competent department to consider posting him at a place other than an investigative assignment. Directions were also issued to the concerned department to initiate appropriate proceedings against the petitioner and communicate the action taken to the Court. Furthermore, a notice under Section 350 Cr.P.C. was issued calling upon him to show cause as to why an appropriate complaint should not be instituted against him.

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3. I have heard learned counsel for the parties and carefully examined the material available on record. It is pertinent to note that a Coordinate Bench of this Court, vide order dated 25.07.2025, has already stayed the effect and operation of the impugned order.

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4. Upon bestowing my thoughtful consideration to the controversy involved, this Court finds that the impugned order, insofar as it concerns the petitioner, suffers from serious legal infirmities.

4.1. The circumstances emerging from the order indicate that the immediate provocation for the learned Trial Court to pass such stringent directions appears to have been the information conveyed by the learned Public Prosecutor regarding the alleged response of the petitioner when contacted over the telephone. Undoubtedly, a police officer, particularly one who is cited as a material prosecution witness, is expected to discharge his obligation to appear before the Court and assist in the administration of justice. The importance of a witness, more particularly an Investigating Officer, in the effective conduct of a criminal trial cannot be undermined. Any deliberate avoidance of judicial process, if established, may certainly invite appropriate action in accordance with law. However, the obligation of a witness to cooperate with the judicial process does not dispense with the requirement that judicial proceedings must themselves conform to the settled principles of law and fair procedure.

4.2. The fundamental principle of criminal jurisprudence and natural justice is that an order carrying adverse civil or service consequences against a person ought not to be passed without

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affording him a reasonable opportunity of explaining his position. The requirement assumes greater significance where the directions are not confined to securing the attendance of a witness but extend to withholding his salary, directing recovery from his emoluments, making adverse entries in his service record, affecting his future posting and initiating proceedings having penal or disciplinary consequences.

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4.3. In the present case, the learned Trial Court appears to have proceeded entirely on the information furnished by the learned Public Prosecutor regarding the alleged telephonic conversation. The petitioner was neither called upon to explain the circumstances in which the alleged conversation took place nor was his response or explanation obtained before passing such far-reaching directions. No opportunity was afforded to him to place his version before the Court.

4.4. It is one thing to issue appropriate process for securing the attendance of a witness who has failed to appear despite service of summons. It is altogether a different matter to proceed against such witness by issuing coercive and punitive directions, particularly those having direct financial, service-related and reputational consequences, without first ascertaining the relevant facts and affording an opportunity of hearing.

4.5. The power of a Court to secure the attendance of a witness and ensure the progress of trial is undoubtedly well recognised. Nevertheless, the exercise of such power cannot be extended to impose consequences which are not supported by the procedure established by law. Judicial authority, however wide, is required to

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be exercised within the bounds of law and with due regard to the principles of fairness and reasonableness.

4.6. The learned Trial Court, while being justified in taking appropriate steps to ensure the presence of the petitioner as a prosecution witness, appears to have travelled beyond that limited objective by issuing directions which were not merely intended to secure his attendance but were also punitive in nature. Such directions, particularly those concerning deduction of salary, adverse endorsement in the service record and suitability for a particular posting, could not have been issued merely on the basis of an allegation conveyed by the learned Public Prosecutor, without affording the petitioner an opportunity to explain his conduct.

4.6. This Court is conscious of the fact that a witness cannot be permitted to frustrate or obstruct the course of a criminal trial by remaining absent or avoiding service of judicial process. Equally, however, the administration of justice demands that even an erring witness be dealt with strictly in accordance with the procedure prescribed by law. The ends of justice cannot be secured by adopting a procedure which itself falls short of the requirements of fairness.

6. Having regard to the aforesaid facts and circumstances, and guided by the settled principles of law laid down by the Hon'ble Supreme Court in this regard, this Court is of the considered opinion that the impugned order, to the extent it contains adverse observations and directions against the petitioner, cannot be sustained in the eyes of law.

7. Consequently, the petition is allowed. The order dated 16.04.2025 passed by the learned Addl. Sessions Judge,

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Kushalgarh, District Banswara in Sessions Case No.61/2022 is set aside to the extent it contains observations and directions concerning the petitioner, including the directions relating to issuance of warrant of arrest, withholding and deduction of salary, endorsement in his service record, suitability for deployment as an Investigating Officer and initiation of consequential proceedings against him.

8.1. It is, however, clarified that this order shall not come in the way of the learned Trial Court in taking appropriate steps, in accordance with law, for securing the presence of the petitioner and other prosecution witnesses and for proceeding further with the trial. The learned Trial Court shall remain at liberty to issue appropriate process and take such further steps as may be permissible in law.

9. The stay order dated 25.07.2025 stands vacated accordingly.

10. All pending applications, if any, also stand disposed of.

(FARJAND ALI),J

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