

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

S.B. Criminal Miscellaneous (Petition) No. 2428/2025

Durga Kanwar Rathore D/o Sh Datar Singh Ji, Aged About 28
Years, R/o Bhaisana Ps Sojat Road District Pali

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Ms. Durga Kanwar Rathore
For Respondent(s)	:	Mr. Hanuman Prajapati, PP

HON'BLE MS. JUSTICE REKHA BORANA

Order

08/05/2026

1. The present misc. petition has been filed with the following
prayers:-

*"1. That the Honorable Lordship accept this
petition and allow expert opinion of competitive
medical jurist (MDM Hospital Jodhpur) or any other
expert medical jurist who could give expert opinion in
the following relief.*

*1.1 Whether medicines mentioned in FR and in
Application u/s 45 of Indian Evidence Act that is.*

*"1. PANTOP DSR (Components Pantoprazole &
Domperdione)*

2. OFOZ (Components Ofloxacin & Ornidazole),

3. CIDO (Components Cinnarizine & Domperidone),

4. ALUP (Components Rebeprazole)"

*could be given under Provision of Schedule H of Drugs
and Cosmetic Rules, 1945 or any other relevant law by
any person who is GNM, ANM or had done midwifery
course without any prescription of doctor or could be*

given by any shopkeeper of pharma store that too without any prescription of doctor.

1.2 How could be above mentioned medicine be given without any prescription of registered medical officer concerned provision of law.

1.3 Whether any person who had done general nursing and midwifery diploma course and the term of registration of search course has been expired, such person could have authority to give such medicines (as in this case Mr. Lokesh Bhatt had done).

1.4 That order of learned Lower Court dated 03/2/25 set aside and allowed the application filed U/s 45 of Indian Evidence Act.

1.5 Any other order which the Honorable Court deems just and proper in the fact and circumstances of the case may also be passed in favour of petitioner."

2. Although, the petition has been filed with the above prayers but then, it is evident that in fact, the same is to assail order dated 03.02.2025 passed by Additional Chief Judicial Magistrate No.5, Jodhpur Metropolitan in Case No. 3461/2023. Vide the said order, the Court rejected the application under Section 45 of the Indian Evidence Act, 1872 as filed on behalf of the applicant – complainant.

3. The brief facts are that a complaint was filed by the petitioner – complainant for offence u/s 279, IPC on which FIR No.339/2023 was registered. However, after investigation, a Final Report was filed in the same. A protest petition was then filed by the complainant. In the said protest proceedings, an application under Section 91, Cr.P.C. was filed by the complainant which ultimately stood allowed vide order dated 30.04.2024 and the

Investigating Officer was directed to file certain documents as called for by the Court.

4. After the said documents been filed, the complainant filed an application under Section 45 of the Indian Evidence Act with an averment that the documents as filed by the Investigating Officer in compliance of order dated 30.04.2024 are forged and hence, prayed that the expert opinion of a Medical Jurist be called for.

5. The learned Trial Court while rejecting the application observed that no such order was required to be passed at that stage. The Court observed that the same could be decided only after the complainant lead her evidence qua the protest petition. No opinion of a Medical Expert could be called for without the protest petition first been decided.

6. In the specific opinion of this Court, the finding as recorded by the learned Trial Court is in consonance with law. Unless and until the protest petition as filed by the complainant is allowed, the learned Trial Court definitely cannot proceed on to enter into the trial itself.

7. No case for interference is made out. The present misc. petition is **disposed of**.

8. The petitioner shall be under an obligation to lead her evidence/get her statements recorded on the next date.

(REKHA BORANA),J