

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM (M) No.332/2021
CrIM No. 1144/2021

Inder Singh (Senior Citizen)

...Petitioner (s)

Through: Mr. Mir Majid Bashir, Advocate

VERSUS

Randeer Singh.

...Respondent(s)

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

29.07.2022

01. The petitioner has challenged order dated 14.02.2015, passed by learned Principal Sessions Judge, Kupwara, whereby the learned Sessions Judge has in a Revision petition set aside order dated 05.05.2014 passed by learned Judicial Magistrate 1st Class, Karnah, whereby in a complaint filed by the petitioner against the respondent for offences under Section 406 RPC, process was issued against the respondent.

02. Nobody has appeared on behalf of the respondent, despite the matter having been passed over.

03. Heard the learned counsel for the petitioner and perused the record including the trial court record.

04. It appears that the petitioner herein had filed a complaint for offences under Section 406 RPC against the respondent before the learned trial Magistrate. The record shows that the complaint was presented before the trial Magistrate on 05.05.2014 and on the same date the learned Magistrate recorded the preliminary evidence of the complainant. Thereafter on the basis of the allegations made in the complaint and the preliminary evidence, the learned Magistrate found that

prima facie offences under Section 406 RPC is made out against the respondent. Accordingly, process was issued against the respondent for his appearance. The record further reveals that on 29.08.2014, the learned trial Magistrate passed another order vide which a direction was issued asking Gurdwara Prabandhak Committee to conduct an enquiry in terms of Section 202 Cr.PC.

05. Aforesaid order was called in question by the respondent by way of Revision petition before the learned Sessions Judge, Kupwara. Vide the impugned order dated 14.02.2015, the learned Sessions Judge, Kupwara, allowed the Revision petition and instead of setting aside order dated 29.08.2014, learned Sessions Judge, Kupwara, set aside order dated 05.05.2014, whereby process was issued against the respondent. A further direction was issued to the learned Magistrate to consider the enquiry report and decide whether to drop the proceedings or to take cognizance of the offences on the basis of the enquiry report.

06. Chapter XVI of Jammu and Kashmir Code of Criminal Procedure, which is applicable to the instant case prescribes that the procedure to be adopted in respect of the private complaint. Chapter XVI begins with Section 200 and culminates with Section 203. Section 200 of the Cr.PC provides that the Magistrate taking cognizance of the offences on a complaint has to examine the complainant and his witnesses upon oath. Section 201 of the Cr.PC deals with a situation where the Magistrate is not competent to take cognizance of the case and in that eventuality, the Magistrate has to return the complaint for its presentation to the proper court. Section 202 of Cr.PC empowers the Magistrate to either enquire into the case himself or to direct the enquiry or the investigation to be made by the sub-ordinate Magistrate or Police Officer or any other person as he thinks fit for the purpose to ascertain truth or falsehood of the complaint.

While doing so, the Magistrate has to postpone the issue of process for compelling the attendance of the person complained against. Section 203 of the Cr.PC provides that if the Magistrate after considering the preliminary evidence of the complainant and the result of the investigation of the enquiry under Section 202 Cr.PC, no sufficient ground for proceedings exists, the complaint has to be dismissed. Here it would also be relevant to refer to the provisions of Section 204 of the Cr.PC which falls in Chapter XVII of the Cr.PC. It provides that if the Magistrate finds that there are sufficient grounds for proceeding process for compelling the attendance of the person complained against is to be issued.

07. From the foregoing narration of the legal position, it becomes clear that the stage of the issuance of process or dismissal of the complaint comes only after recording the preliminary evidence and conducting of enquiry if the Magistrate deems it necessary to hold such an enquiry.

08. In the instant case, the learned Magistrate on the basis of the preliminary evidence came to the conclusion that there is sufficient material to proceed against the respondent. This has been observed by the Magistrate in his order dated 05.05.2014, pursuant to which the process was issued against the respondent. Having proceeded in the aforesaid manner, it was not open to the Magistrate to go back to the stage of directing the enquiry in terms of Section 202 Cr.PC. The enquiry, as already noted, is only conducted to ascertain the truthfulness or falsehood of the contents of the complaint. Once the Magistrate had made up his mind that there is prima facie merit in the allegations made in the complaint and he had observed that offence under Section 406 RPC is made out against the respondent, he could not have gone back to the stage of directing the enquiry in terms of Section 202 Cr.PC. Thus, the order passed by the Magistrate on 29.08.2014, directing the investigation/enquiry under Section 202

of the Cr.PC, is without jurisdiction and palpably illegal. The learned Magistrate by directing enquiry under Section 202 of the Cr.PC has in effect reviewed his order dated 05.05.2014, which is not permissible in criminal jurisdiction.

09. Coming to the order passed by the learned Revisional Court, the said order is also not in accordance with the law inasmuch as the learned Sessions Judge, Kupwara, has instead of setting aside order dated 29.08.2014, quashed order dated 05.05.2014 thereby perpetuating the illegality. As already noted, order dated 05.05.2014 passed by the trial Magistrate in accordance with the law and as such the same did not deserve to be quashed particularly when the said order was not under challenge before the learned Sessions Judge, Kupwara.

10. For the foregoing reasons, while allowing the Revision petition and setting aside order dated 14.02.2015, passed by the learned Revisional court, the order passed by the learned trial Magistrate dated 29.08.2014 is also quashed. The learned Magistrate is directed to proceed in the matter from the stage of issuance of process afresh and take further steps in accordance with the law. Copy of this order be sent to the trial Magistrate.

11. At this stage, learned counsel for the petitioner has submitted that the learned Magistrate has passed an order directing release of the articles in his favour. It is clarified that once the proceedings before the learned Magistrate stands revived in terms of the aforesaid directions of this Court, all proceedings upto the date of issuance of process against the respondents i.e. upto 05.05.2014, shall stand revived.

12. The petition is *disposed* of accordingly.

(Sanjay Dhar)
Judge

SRINAGAR
29.07.2022
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