

**(2018) 07 J&K CK 0087**

**In the Jammu And Kashmir High Court**

**Case No :** Criminal Miscellaneous Case No.. 118 Of 2014, Ia No. 139 Of 2014

**Ajay Singh And Another @APPELLANT@Hash Harbans Lal Bhagat**

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**Date of Decision :** 23-07-2018

**Acts Referred:**

Code of Criminal Procedure 1973, — Section 202, 203, 561A  
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 420, 467, 506

**Citation :** (2018) 07 J&K CK 0087

**Hon'ble Judges :** Janak Raj Kotwal, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Respondent has chosen not to contest this petition and has been set off ex-parte.

Heard learned counsel for the petitioners.

This petition under section 561-A Cr. P.C. seeks quashing of a complaint, titled, Harbans Lal Bhagat vs. Ajay Singh and another, filed against the

petitioners by respondent, Harbans Lal Bhagat (complainant) for commission of offences under sections 420, 467 and 506 RPC, which on committal

by the learned Judicial Magistrate (City Judge), Jammu is pending before the court of learned Additional Sessions Judge, Jammu. Quashing is sought,

primarily, on the ground that complaint on its plain reading does not make out commission of any offence, even prima facie, against the petitioners and

the learned Magistrate has fallen in error by issuing the process against the petitioners and committing the case for trial.

The record on the trial court file would show that the learned Magistrate has erred in issuing process against petitioners and committing the case for

trial to the court of Session. I am rather persuaded to agree with the learned counsel for the petitioners that the complaint on its bare perusal does not

disclose commission of any offence by the petitioners.

The complaint gives a detailed narration about borrowing of Rs. 50,000/ by the petitioners (accused) from respondent (complainant) and

petitioners's refusal and failure to return the said amount to the respondent. It is rather a case of simple lending of money by the respondent to the

petitioners than a case for proceeding for commission of any offence against the petitioners.

It is noticed that this complaint came up before the learned Magistrate on 16.06.2012. Learned Magistrate after recording the initial statements of the

complainant and the witnesses produced by him and postponed issuance of process against the petitioners taking the view that there is

involvement of cash and therefore this complaint, which is not supported by the documentary evidence except the photocopy of marks card of Higher

Secondary Part-II and a copy of voter list showing the name of accused No. 1.

Investigation in terms of section 202 Cr. P. C. was conducted by the SHO, Police Station, Gharota, Jammu. By virtue of report dated 11.08.2012, he

reported that commission of no offence was proved against the petitioners (accused) and that both the parties were in the habit of leveling allegations

about money transaction against each other.

Notwithstanding, the report of SHO, learned Magistrate by virtue of the order passed on 17.12.2012 recorded his dissatisfaction with the police report

and in view of the pleadings of the respondent (complainant) and his statement and statements of the witnesses produced by him, issued a process

against the petitioners for proceeding against them for commission of offence under sections 420 and 467 RPC and later committed the case to the

court of Session for trial for the offence under section 467 being exclusively triable by the court of Session.

Once there was no material in support of the complaint, the same could have been dismissed in limine in terms of section 203 Cr.P.C. However, the

Magistrate felt the necessity of investigation in terms of section 202 Cr.P.C. Once the Investigator reported that no offence was proved against the

petitioners, the question of issuing process against the petitioners on the basis of the complaint and the statements earlier recorded did not arise at all.

For the aforementioned, this petition has strong merit and is allowed. The complaint as well as all proceedings therein are quashed.

Record of the court below be remitted back along with copy of this order.