
(1993) 10 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : 561-A No. 131 of 1989

Anwar Siddiqui

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251A

Citation : (1994) JKLR 917 : (1994) KashLJ 734 : (1995) 1 RCR(Criminal) 722 : (1994) 1 SriLJ 249 : (1994) SriLJ 249

Hon'ble Judges : A.Q.Pararay, J

Bench : Single Bench

Judgement

1. This petition under section 561A Cr. P.C. seems to have been moved on behalf of petitioner/accused Anwar Siddiqui way back in November

1989.

2. The facts in brief which have given rise to the present case are that the petitioner has been challaned under section 420 read with section 406

RFC by police station Ram Munshibagh on FIR No: 52 of 1989.

3. It is alleged that on 23.5.1989, complainant Sidiq Gunna S/o Mohammad Sultan Gunna R/o Daigate, Srinagar lodged a verbal report with the

police station Ram Munshibagh that he had asked for renting out of hotel 'Green' from its owner Abdul Rahman Dar of Sonwar on yearly rent

basis of Rs. 1,05 lakhs and he had paid an advance of Rs. 50,000/ to said Abdul Rahman Dar. As because the hotel was still under construction, it

was not ready for letting out, so he procured back the advance amount of Rs. 50,000/. This he was carrying when one person Anwar Siddiqui who

was known to the complainant was accompanying him. When they reached in the Sonwar market, the complainant alleges that he had gone to buy

a cigarette and in the meanwhile he entrusted these Rs. 50,000/ to said Anwar Siddiqui. When he came back after purchasing cigarette, he found

Anwar Siddiqui alongwith the amount missing and he was told that he had boarded an auto and had fled out from spot.

4. On the above averments, the complainant got a case registered that his amount which was entrusted by him to petitioner Anwar Siddiqui had

been misappropriated by him and after misappropriation, he vanished from the spot. After this report was registered, the accused/petitioner herein

was apprehended and the amount of Rs. 46,000/ was recovered from his person and at his instance and he has been put for trial.

5. The version given by accused/petitioner herein is that infact the person of the complainant and the accused had intended to run a hotel on

partnership basis and on this assurance he was persuaded by the complainant time and again per written letters and other communications to

advance money for hiring a hotel for running hotel business and was also told by the complainant that he shall provide and come along with a

suitable cook and other materials so that they are SIC running the hotel business in a very nice manner and at a grand scale and had also assured

him that he will also arrange for his marriage with a beautiful girl in a very good family in Kashmir. In fact the petitioner herein was deceived by the

person of She complainant and he had advanced certain amounts of money for starting of hotel, but when he came alongwith the cook to Srinagar,

he found no hotel to have been hired and assurances were only deceptions. So he persuaded the complainant to return him the advance money, he

had given. This advance amount was returned to him as per his averments and when he sitting in his room at Batamaloo, he was arrested by the

police and the amount has been recovered from his person which he admitted before the trial court also that the amount belongs to him. He has not

misappropriated or stolen the same, from the complainant. In support of his contentions, he had also placed on record Photostat copies of some

letters alleged to have been written by the complainant to the accused/petitioner herein which forms annexures numbering about five.

6. The petitioner has been charge sheeted by the Judicial magistrate/Judge Small Causes court, Srinagar on 11.8.1989. He has pleaded not guilty

to the charge and has admitted that the amount seized in the case belongs to him and has been recovered from him but till date no evidence has

been recorded by the court in support of the challan.

7. As the petition was pending in this court, the parties though served have not chosen to appear before the court. So this court has treated this

application under section 561A Cr.P.C. as revision petition and on this count the court after having considered the material brought on record and

perusal of the court file and the challan papers soumotu treat this as a revision petition under the inherent powers of this court to save the process

of abuse of the court. The charge framed in the case has not been framed on appreciation of the facts which have been brought to the notice of the

trial Magistrate. The trial Magistrate has nodoubt to proceed under the provisions of section 251 A Cr. P.C. as amended till date, whereunder it is

provided as under:

251A (i) when a case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such

Magistrate shall satisfy himself that the documents referred to in Section 173 Cr.P.C. have been furnished to the accused and if he finds that the

accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(ii) If upon consideration of all the documents referred to in Section 173 Cr.P.C. and making such examination, if any of the accused as the

Magistrate thinks necessary and after giving prosecution and the accused an opportunity of being heard, the Magistrate considers the charge

against the accused to be groundless, he shall discharge him.

(iii) If, upon such documents being considered, such examination, if any being made and the prosecution and accused being given an opportunity of

being heard the magistrate is of the opinion that there is no ground for presuming that the accused has committed an offence triable under this

chapter, which such Magistrate is competent to try and which in his opinion, can be adequately punished by him, he shall frame in writing a charge

against the accused.

(iv) The charge shall be then read over and explained to the accused and he shall be asked whether he is guilty or claims to be tried.....

8. So the provisions of Section 251 make it abundantly clear and mandatory that the accused is to be provided with all the documents referred to

under section 173 Cr.P.C. and in case all the documents have not been provided

to the accused, the Magistrate shall ensure that the documents are provided to him and cause them to be furnished to the accused and secondly after consideration of all the documents referred to under section 173 Cr.P.C. and making such examination, if any, of the accused, as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him. So the fact is that the Magistrate has to consider the documents, examination of the accused and an opportunity is to be provided to the prosecution as well as to the accused of hearing in advancing their respective cases. Hearing includes not only verbal statements, but even documents, statements SIC made by the accused in support of his contentions. The statement which the accused may give weightage. The documents which the accused may like to refer or place on records are to be given due considerations.

9. From the perusal of the file, it, however, seems that no statement worth the name has been recorded of the accused before framing of the charge. Though it was a discretion of the Magistrate to record the statement of the accused and hear him as well as his counsel, but it seems that he has not been given this opportunity. The order which has been passed by learned trial Magistrate reads:

...Learned counsel have been heard in connection with prima facie case. At this stage perusal of the documents disclose a case prima facie in terms of section 406/420 RFC against the accused. The accused is charged accordingly. He pleads not guilty to the allegation levelled against him".

10. Nowhere the Magistrate says that he has heard the accused. The documents to which reference has been made before this court sound some defence of the accused which should have been considered by the Magistrate at the time of framing of the charge before coming to a conclusion as to whether the accused is to be charged about the allegations levelled against him or he is to be discharged. So it was bounded duty of the Magistrate to hear the accused both verbally as well as by documents.

11. For the foregoing reasons, I think that this is a fit case, wherein this court should exercise its inherent jurisdiction and order the quashing of the charge with the direction to the learned Magistrate to give an opportunity to the

prosecution as well as to the accused to the documents which they may place before the trial Magistrate and prior to the framing of the charge, preliminary statement of the accused be also recorded which is provided under the provisions of SubClause (ii) of section 251A of Cr.P.C. and after doing the needful, he shall proceed in accordance with law.

The revision petition is disposed of accordingly. The trial court file be transmitted back to court below and the revision file be consigned to records.