

(2004) 03 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : 561-A CRP No. 32 of 1999

Deepak Kumar and Another	Vs	APPELLANT
Rattan Lal Koul		RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 173, 250, 251A, 561A
Ranbir Penal Code, 1989 — Section 186, 190

Citation : (2004) 2 JKJ 432

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : H.I. Hussain, for the Appellant; Nemo, for the Respondent

Judgement

Sayed Bashir-Ud-Din, J.—Respondent despite efforts to serve him at his official/residential address is not traceable and has not appeared.

Having regard to the totality of facts and circumstances of the case, appearance of respondent is dispensed with under enabling provisions of law.

2. Heard. The two petitioners, the then Superintendent of Police Kargil and S.H.O. Police Station Kargil are challenging the order dated

26.7.1999, where-under the Chief Judicial Magistrate Kargil has dismissed the complaint filed against respondent/accused and also issued notice

to petitioners to show cause why they may not be punished to pay compensation in terms of Section 250 CR.P.C.

3. Petitioner-s while supervising and ensuring that no copying takes place in the examination centers in Govt. Girls Higher Secondary School

Kargil, as per orders and directions of the higher ups in the Govt. deputed one Abdul Rehman ASI along with other Police personnel for duty on

30.4.1999 at the examination centre when the examination of Class 12th

students was being held. The Police personnel were on duty around the examination Centre and on the main gate the Principal, accused Rattan Lal Koul, took objection and asked them to withdraw. The Principal was asked to give in writing all this to the ASI so that Police could be withdrawn. Principal threatened the police party and incited people against the police personnel on spot. On this complaint, the Principal was summoned and taken to Police station, u/s 54 of Cr.P.C. where he was let off.

However, a complaint was filed against the accused u/s 190 RPC for having committed offence u/s 186 RPC. (Annexure-B) Once the complaint was filed, the Magistrate was to take cognizance and proceeded in the matter in the manner provided for a summons case under Chapter XVI of

Cr.P.C. The Magistrate instead of following this statutorily laid procedure, has gone on a wrong track and treated the matter as a case instituted on

police report u/s 173 Cr. P.C. and thereby followed the procedure prescribed for such case u/s 251A C.P.C. By the impugned judgment and

order, the Magistrate dismissed the case and instead recorded an order of discharge on the ground that the case has been investigated by the

Police in breach of provisions of Section 155 Cr.P.C. In fact the CJM Kargil has dismissed the case ""for defective and illegal investigation"", least

realizing the case before him is not one on police report u/s 173 Cr.P.C. Instead of taking cognizance of the case u/s 191A Cr.P.C., and

proceeding in the matter under Chapter XIV of Cr.P.C., the Magistrate has confused the whole issue and erroneously recorded that the

investigation of case by the Police is in breach of provision of Section 155(2) of Cr.P.C.

4. Admittedly, the case at hand is a non-cognizable case, but it is equally true that the case has not been investigated by the police. Instead police is

only complainant and has filed complaint like all other complainants. Not only so, the Magistrate has discharged the accused and dismissed the

complaint only because he has come to the conclusion 'that the investigation is defective and illegal'. Apart from the fact that case as stated above is

not investigated by parties, only because the investigation is 'defective and deficient', Accused cannot be let off. Lacuna or deficiency in

investigation does not perse culminate in the acquittal or discharge of an accused. The Magistrate has on the one hand dismissed the case as one

defectively investigated by the Police and treated the complaint as "'Police report u/s 171 Cr. P.C.' yet on the other hand has bungled to follow

wholly unsustainable track in issuing a notice to the then SSP, SHO Police Station Kargil u/s 250 Cr.P.C. for false frivolous and vexatious

allegations made in a complaint. There is no finding or decision recorded that the complaint was false, frivolous or vexatious.

5. In the aforesaid view of the matter, the impugned order in any case is not sustainable under law. The impugned order is legal, (sic) infirm and has

no merit and is quashed. Send back the record. Disposed of.