

(1998) 12 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : L.A. No. 63 Of 1998

H.S.Sahni and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Jammu and Kashmir High Court Rules, 1975 — Rule 23(2)

Citation : (1999) 2 SriLJ 523

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : M.A.Goni, D.C.Raina , Anil Sethi , Advocates appearing for the Parties

Judgement

1. Heard the learned counsel for the parties. This case has been referred to me as third judge by the Chief Justice under subrule(2) of Rule23 of J

and K High Court Rules for having arisen difference of opinion between the two judges, Mr. Goel J and Mr. Sharma J in consequences of which

separate judgments have been passed. Learned counsel for the parties are present. Mr. DC Raina, learned counsel for the writ petitioners invited

my attention to rule 23(2) and urged that the points of difference have not been formulated by the differing judges as is envisaged by subrule(2) of

Rule23 which reads as under:

(2) if the judges composing the bench are equally divided on any point, they shall state the points upon which they differ and the case shall then be

heard upon that point by one or more of the other judges designated for the purpose by the Chief Justice and such points shall be decided

according to the opinion of the majority (if any) of the judges who have heard the case including those who first heard it.

2. Learned Advocate General has contended that there is no need to formulate points of difference because the whole case has been decided by

two different judgments by the Brother Judges, so this court has to decide the whole case afresh.

3. I have gone through the order of reference. Reference has been sent under subrule (2) of Rule23.

4. Learned counsel fertile appellants Mr. D.C.Raina has invited my attention to certain judgments of this court in which more or less interpretation

of rule23(2) has been discussed. However, I .will refer only one case Farooq Ahmad Bacha and Others Vs. State of J and K and Others In this

case difference of opinion was between Mr. Justice M.L.Bhat and Mr. Justice R.P.Sethi. The case was referred to Hon'ble Dr. A S Anand, Chief

Justice as he then was as third judge. In this case points of difference no doubt were formulated. Mr. B. A.Khan as Additional Advocate General

as he then was took pains in persuading the court to hear the entire case denovo. The third Judge declined to do so because that is not within the

parameters of rule23 and cannot overstep the same. Rule23(2) has been discussed in this judgment also and has been observed that the third judge

has to decide the points in issue only. Though this case is not strictly applicable in the present one, but however, this can be construed that the

court has to decide only points of difference and cannot travel beyond that.

5. For these reasons I subscribe to the view of Mr. D.C.Raina, learned counsel for the writ petitioners that the differing judges should have

formulated the points of difference. Rule23 subrule(2) deals with the situation as has arisen in this case. A plain reading of this rule envisages

formulating points of difference when such situation arises.

6. Notwithstanding this objection does not affect merits of the case, but however, to be on safer side I think it is better to send the case back for

getting the points of difference formulated so that tomorrow it will not be left open to raise objection that the third Judge has traversed beyond his

jurisdiction to decide the whole case.

7. For these reasons, therefore, the case is sent back to Hon'ble Chief Justice to get the points of difference formulated.'