
(1975) 07 J&K CK 0007
In the Jammu And Kashmir High Court

Jalal-ud-Din

APPELLANT

Vs

Shahzada Bano and others

RESPONDENT

Date of Decision : 10-07-1975

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 96

Citation : (1975) JKLR 342 : (1975) KashLJ 355

Hon'ble Judges : A.S.Anand, J

Bench : Single Bench

Advocate : S.T.Hussain, M.N.Kharadoori, Advocates appearing for the Parties

Judgement

(1) This revision petition is directed against the order of the Chief Judicial Magistrate, Srinagar, dated 13th March, 1974, whereby he has affirmed

the order of the Judicial Magistrate (SubRegistrar) Srinagar dated 25th April 1973 ordering the issuance of search warrant under section 96 of

the Criminal Procedure Code.

A complaint under sections 348, 347 and 392 RFC was filed before the Judicial Magistrate (Sub Registrar) Srinagar by one Mst. Shahzada

Bano. A prayer was made for the issuance of search warrant under section 96 Cr. P. C. before the trial Magistrate, and the learned Magistrate

vide his order dated 25th April, 1973 issued a search warrant.

(3) I have heard the learned counsel for the parties, and have perused the records. In my opinion this revision petition must succeed on the ground

that the order of the learned Magistrate whereby the issuance of search warrant was directed does not contain any reason therefor. It is an

accepted principle of law that the function for issuance of search warrant is a judicial function and it, therefore, follows that it is highly desirable for

the court to give reasons in support of their order so that the courts of appeal or revision are in a position to examine whether there has been a proper exercise of the discretion by the court or the discretion has been exercised arbitrarily. The order of the learned Magistrate dated 25th April, 1973 is a cryptic order, and is almost telegraphic. No reasons whatsoever have been assigned by the Magistrate as to why he thought fit to order the issue of the search warrant. It was incumbent on him to have given the reasons which led to his satisfaction. No reasons are apparent on the record. Failure to state reasons could lead to the inference that exercise of discretion was perhaps arbitrary and not based on well recognised principles. That by itself is a ground for setting aside the order. Appearing on behalf of the respondent, Mr. Hussain has frankly conceded that the order does not contain sufficient reasons and the same is therefore not sustainable.

(4) The learned counsel for the petitioner has also submitted that no search warrant could be issued under section 96 Cr. P. C. as it was known that the case property was with the accused. This position has been vehemently controverted and it has been brought to my notice that the learned counsel for the accused No. 3 had made a statement at the bar before the learned trial court to the effect that the property was not in possession of the accused. The learned counsel for the petitioner has placed reliance on a Judgment of this court reported in 1972 JandK Law Reporter page 618 Be that as it may, I do not think it necessary for me to go into this question as I have decided to set aside the order of the learned Magistrate for the reasons given above. It would be open to the parties to raise this question before the trial magistrate. Since the case is being remanded to him for passing appropriate orders in accordance with law. I would accordingly allow the revision petition and remand the case to the trial magistrate to pass appropriate orders in accordance with law.