

---

**(1991) 04 RAJ CK 0024**

**In the Rajasthan High Court**

**Case No : Criminal Miscellaneous Petition No. 267 of 1983**

Om Prakash Puri

APPELLANT

Vs

State of Rajasthan

RESPONDENT

---

**Date of Decision : 12-04-1991**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200  
Penal Code, 1860 (IPC) — Section 156, 166, 197, 217, 379

**Citation : (1991) 1 RLW 651 : (1991) 1 WLN 342**

**Hon'ble Judges : N.K. Jain, J**

**Bench : Single Bench**

**Final Decision : Allowed**

---

## **Judgement**

N.K. Jain, J.—This miscellaneous petition is directed against the order of Chief Judicial Magistrate dated 9.8.83 for quashing the cognizance against the petitioner, and the pending proceedings.

2. Brief facts giving rise to this petition are that one Shanker Lal filed a Complaint on 13.6.80 before the CJM, Chittorgarh for the offence u/s 379 IPC with the allegation that some bamboo trees were cut by the accused named in the complaint. The complaint was sent for investigation u/s 156(3) to P.S. Chittorgarh where the petitioner was posted as S.H.O. After investigation, petitioner returned the complaint on 21.6.80 with a endorsement that on earlier occasion in FIR No. 205/80 after investigation, a final report was submitted but the CJM again sent the same with a direction to register and investigate. Thereupon the FIR No. 460/80 was registered and investigation was started but the learned Magistrate issued show cause notice, though the reply was filed but the Magistrate on 3.6.83 lodged a complaint in the court for the offence u/s 217 and issued the summons. The petitioner appeared before the learned Magistrate and an application u/s 197 was submitted that without sanction trial cannot be initiated and otherwise also no case Under Sections 217 and 166 IPC is made out, but the learned Chief Judicial Magistrate took cognizance against the

petitioner. Hence this petition.

3. Mr. J.R. Choudhary, the learned Counsel for the petitioner has submitted that the order of taking cognizance is not called for as S.H.O. submitted the FIR for seeking direction but the learned Magistrate proceeded and took the cognizance.

4. Mr. V.S. Choudhary, learned Public Prosecutor has opposed the petition and submitted that the Magistrate is empowered to take cognizance against the petitioner.

5. The Magistrate has three options with him when the final report is submitted; (i) he may accept the final report and drop the further proceedings; (ii) he may decline to accept the final report and may take cognizance and (iii) he may proceed to examine the complainant and his witnesses u/s 200 Cr. PC. The Magistrate was free to adopt any of the course but instead of that, the Magistrate thought that his orders were not complied with and directed that the petitioner must be prosecuted, with is certainly amounts to abuse of the process of the court, more particularly when the S.H.O. submitted first information report for seeking direction as in the earlier final report after investigation it was found that the land belonging to coparceners and the bamboo trees are also joint properties and he was of the view that matter can be decided by a civil court. In view of this, if these proceedings are allowed to continue it will amounts to abuse of the process of the court. Thus, in my opinion to secure ends of justice, the order passed by the learned CJM deserves to be quashed.

6. In the result, this petition is allowed, the order passed by learned Chief Judicial Magistrate is set aside and pending proceedings against the petitioner in criminal case No. 671/81 are quashed.