

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

**CRA No. 20/2019**

Date of pronouncement: 27.02.2026

Date of uploading: 02.03.2026

Thoru Ram S/o Kapura Ram  
R/o Bhalwal Tehsil Bhalwal  
District Jammu  
Mobile No. 8082076965

.....Appellant(s)/Petitioner(s)

Through: Mr. L. K. Sharma, Sr. Advocate with  
Mr. Mohit Kumar, Advocate

**vs**

1. Shello Devi W/o Jinder Kumar  
R/o Old Basti, Bahu Fort, Jammu
2. Jinder Kumar S/o Mansa Ram  
R/o Old Basti Bahu Fort, Jammu

..... Respondent(s)

Through: None

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

**27.02.2026**

1. Heard learned counsel for the parties and perused the record.
2. Briefly stated, the petitioner had instituted a complaint on 14.07.2014 before the Court of JMIC/Sub-Judge, Jammu (hereinafter referred to as "the Trial Court"), alleging commission of offences punishable under Sections 447, 504 and 506 RPC read with Sections 34 and 149 RPC. Upon presentation, the Trial Court, in order to ascertain the veracity of the allegations, directed an enquiry under Section 202 of the J&K Code of Criminal Procedure, 1989 (1933 A.D.) through the SDPO, Domana. After receipt of the enquiry report, and upon consideration of the material so collected, the Trial Court formed a prima facie opinion that offences under Sections 447, 504 and 506 RPC were made out against the respondents-accused and accordingly issued process.

3. The accused appeared before the Trial Court, were admitted to bail and, on 12.08.2016 (the order mentions 02.08.2016 in substance), the accusations were read over and explained to them in terms of Section 242 of the Code applicable at the relevant time. The accused pleaded not guilty and claimed trial. Thereafter, the matter was posted for prosecution evidence.
4. However, it emerges from the record that despite repeated opportunities spanning more than twenty hearings, the complainant neither entered the witness box himself nor examined any witness in support of the complaint. Ultimately, by order dated 17.01.2019, the Trial Court dismissed the complaint for want of evidence and acquitted the respondents, observing that the complainant had failed to adduce any evidence whatsoever despite ample opportunities.
5. Learned counsel for the petitioner has contended that the complainant was consistently present before the Trial Court and that it was incumbent upon the Magistrate to examine him. It is urged that since the statement of the complainant had not been recorded after framing of notice, there was no occasion for him to produce other witnesses and that the Trial Court acted in undue haste in dismissing the complaint.
6. The aforesaid contention does not merit acceptance. The complaint in question was filed in the year 2014, when the J&K Code of Criminal Procedure, 1989 governed the field. The offences alleged, Sections 447, 504 and 506 RPC, being summons triable, were required to be tried in accordance with the procedure prescribed for summons cases. Once the accusations were read over and explained to the accused in terms of Section 242 of the Code and the accused pleaded not guilty, the

Magistrate was required, in terms of Section 244 of the Code, to proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution.

7. The scheme of Section 244 makes it abundantly clear that the obligation to produce evidence in support of the complaint primarily rests upon the complainant. Sub-section (2) thereof enables the Magistrate, on an application made by the complainant, to issue summons to any witness directing his attendance or for production of documents. Sub-section (3) further mandates deposit of reasonable expenses before summoning a witness. Thus, the statutory framework envisages an active role of the complainant in leading evidence and invoking the process of the Court for securing attendance of witnesses.
8. In the present case, the record unmistakably reflects that after service of notice and plea of not guilty, the complainant did not step into the witness box. He neither moved an application under Section 244(2) for issuance of process to any witness nor deposited expenses as contemplated under sub-section (3). Even on his own, he did not examine any witness. Mere physical presence of the complainant in Court on dates fixed for evidence does not absolve him of the duty to adduce evidence. The Magistrate is not under a legal mandate to suo motu examine the complainant as a Court witness in a private complaint case, particularly when the complainant himself does not volunteer to enter the witness box.
9. When confronted with the factual matrix, learned counsel for the petitioner was unable to offer any plausible explanation as to why for over twenty hearings no evidence was led. It is not the case of the

petitioner that opportunities were denied or that the Trial Court closed the evidence abruptly. On the contrary, the order impugned demonstrates that sufficient and repeated opportunities were granted.

10. In a summons trial instituted otherwise than on a police report, failure of the complainant to lead evidence despite adequate opportunity justifies dismissal of the complaint for want of prosecution/evidence. The Trial Court, having found complete absence of evidence to substantiate the allegations, was justified in dismissing the complaint and discharging the accused.

11. This Court, upon independent scrutiny of the record, does not find any illegality, perversity or material irregularity in the impugned order warranting interference in exercise of revisional/supervisory jurisdiction.

12. Consequently, the petition is found to be devoid of merit and is accordingly dismissed. Interim directions, if any, shall stand vacated. The original record of the Trial Court, if summoned, be returned forthwith.

**(Sanjay Parihar)**  
**Judge**

**Jammu**  
27.02.2026  
Vishal Sharma

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| Whether the order is reportable? | No  |
| Whether the order is speaking?   | Yes |