

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 486/2021

Reserved on: 05.08.2026
Pronounced on : 20.08.2026
Uploaded on : 20.08.2026

Operative part or full judgment: Full

Karnail Singh

S/O Nanak Chand
R/O H. No. 141, Lane No. 8,
Shanti Nagar, Kunjwani,
Jammu.

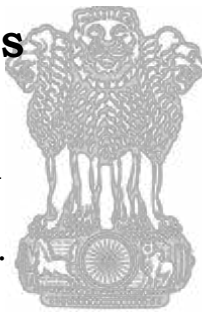
....Petitioners

Through:- Mr. Sachin Gupta, Advocate
Ms. Arsha Sharma, Advocate.

V/S

Rahul Singh Sambyal

S/O Sh. Shiv Karan Singh
R/O Mandi Pachwallian
Tehsil and District Samba.



....Respondents

Through:- Mr. Jagpaul Singh, Advocate
Mr. Nikhil Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE
JUDGMENT

01. Petitioner, through the medium of this petition, moved under section 482 of the Code of Criminal Procedure, 1973 seeks quashment of order dated 26.03.2021 passed by the learned Chief Judicial Magistrate, Samba (hereinafter to be referred to as **“trial court”**) in case titled ‘Rahul Singh Sambyal Vs. Karnail Singh’ under section 504/506 IPC.

02. It is pleaded in the petition that the respondent has filed a complaint before the trial court on the allegations that a

dispute with regard to land was reported at Police Post Supwal where the petitioner was posted as Incharge Police Post at that relevant time and the petitioner had made some remarks against the respondent, who is practicing lawyer in District Court, Samba; that at about 9.00 PM, respondent called the petitioner on his telephone number to verify about the case and during the telephonic conversation, the petitioner started shouting at the respondent. It is further pleaded in the petition that the respondent has misrepresented the trial court by making false and frivolous allegation that the petitioner shouted at him but in fact the respondent threatened the petitioner of dire consequences for not lodging an FIR on the application of respondent's client; that the respondent in order to wreak vengeance and to terrorize and demoralize the police agency has filed the false and frivolous complaint against the petitioner.

03. It is next alleged that the respondent has been involved in FIR No. 0189/2019 dated 29.08.2019 in the Police Station, Samba as he along with some fellow colleagues attacked the police personnel; that the respondent has also been involved in filing the false cases against other person also and lodged FIR No. 256/2013 dated 30.12.2013, falsely implicating Panku Sharma, Vinod Sambyal and Shivdarshan Singh.

04. Petitioner has assailed the impugned order, inter alia, on the grounds that the complaint filed by the respondent is a way to wreck vengeance and to terrorize and demoralize

the police agency; that there was no provocation on the side of the petitioner, in fact, it was the respondent who called the petitioner and asked him to be ready for the consequences for not lodging an FIR on the application filed by the respondent's client, moreover, it was the respondent only who called the petitioner and started threatening him, in order to wreak vengeance on the previous issues; that for the offence of criminal intimidation, there should be threat with any injury to the person, reputation or property or to the person or reputation in whom the person is interested; that the complaint which is pending disposal before the trial court is a concocted story portrayed by the respondent; and that the present complaint is filed only to force the presence of the petitioner in the court complex, Samba. Finally, it has been prayed that the order impugned be quashed.

05. Pursuant to notice, objections have been filed by the respondent asserting therein that bare perusal of the complaint transpires that 'prima facie' a case under section 504/506 IPC has been made out against the petitioner as the basic ingredients of both the offences are admittedly fulfilled in the complaint; that the averments made in the petition regarding registration of FIR No. 0189/2019 has no connection with the order impugned, in fact, the respondent was wrongly implicated in the said FIR along with all the members of the Bar; that the registration of the said FIR is a glaring example of the abuse of the process of law; that the FIR No. 256/2013, as mentioned by the petitioner in the petition, has no connection

with the order impugned as how the petitioner can say that the respondent has narrated false and frivolous allegations in the said FIR. Finally, it has been prayed that the petition be dismissed.

06. Learned counsel for the petitioner while reiterating the grounds of challenge has argued that the petitioner is a police officer, who was investigating the case wherein one client of respondent-Advocate was involved; that the respondent-Advocate had filed the complaint against the petitioner alleging that he had made some scandalous remarks about the petitioner regarding which the complaint has been filed against him before the court below. He further argued that there was a civil dispute between two brothers and the respondent, who is a practising advocate at Samba court, had called the petitioner, telephonically, to help his client in the case and that during conversation, he was threatened by the respondent with dire consequences and on being told that he would investigate the case as per law, the respondent-Advocate having offended filed a complaint against him for the commission of offences under sections 504, 506 IPC. Even without seeking requisite sanction, as required under section 197 CrPC, the petitioner has, thus, been prosecuted. The learned Magistrate not only entertained a false complaint lodged against the petitioner by the respondent but also took cognizance and issued the process of which he is aggrieved, hence he has filed this petition seeking quashment.

07. Learned counsel for the petitioner has further argued that the petitioner was called by the respondent while performing an official act of investigation of a case regarding which the respondent had tried to interfere, as such, whatever the respondent has alleged against the petitioner was made during the performance of his official duty during investigation of the case, as such, before launching any prosecution against the petitioner, sanction under section 197 CrPC read with Section 8 of the Police Act was a pre-requisite and imperative, however, the complaint was lodged without seeking any sanction from the competent authority and, as such, the complaint is not maintainable and is liable to be dismissed.

08. Learned counsel for the respondent, ex adverso, argued that Section 197 CrPC with regard to sanction to prosecute public servants was not applicable to the petitioner as he can be removed from his service under the orders of the Deputy Inspector General of Police, in terms of Rule 335 of the J&K Police Rules. He further argued that the trial court has rightly taken cognizance of the complaint and drawn the attention of this Court to paragraphs 6 and 8 of the complaint which, inter alia, discloses that at about 9 P.M., a colleague of the respondent-complainant, namely, Mandeep Singh Sambyal visited him and in order to verify the remarks reported to him by his client made by the petitioner-accused and to know that why the accused person had made those remarks, the complainant called him on his mobile phone and asked him about the same but to the utter surprise of the complainant,

the accused started shouting at him, abusing and using most vulgar and shameful language, threatening, that he will call him to teach him a lesson, will make an adverse entry in the roznamcha, ruin his entire career and that he shall be implicated in a false case of NDPS; that when the complainant told the accused person that he will prosecute against him under law, then he told him that, whatever you may do, he is not afraid of anything, thereby provoking the complainant to commit an offence against him, however, his colleagues pacified the complainant.

09. He finally argued that the complaint has been rightly entertained by the learned Magistrate and the prosecution of the petitioner is required to reach to the just conclusion of the case.

10. Heard learned counsel for the parties, perused the record and considered the matter.

11. Besides pleading that he has been falsely implicated in the case by the respondent, who has filed a complaint against him before the court of learned Magistrate, the petitioner has mainly relied upon absence of sanction to prosecute him with the assertion that alleged offence was reasonably connected with the performance of his official duty as a police officer and that he cannot be prosecuted without obtaining a sanction under section 197 CrPC.

12. It would be appropriate to extract Section 197 CrPC for better understanding of the case:

“197. Prosecution of Judges and public servants.

- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government.”

13. The Patna High Court in a case of Abhay Narayan Singh Vs. State of Bihar & Ors, **2025 SCC Online Pat 2224** had held that the requirement of prior sanction under section 197 of CrPC protects public servant from vexatious and retaliatory legal proceedings for acts reasonably connected to the discharge of their official duties. The Apex Court in a case titled D.T. Virupakshappa Vs. C. Subash reported as **2015 CriLJ 2589** had held that whole allegation is on police excess in connection with the prosecution of the criminal case and that offensive conduct was reasonably connected with the official duty of the appellant.

14. The Apex Court in a case of Om Parkash & Ors Vs. State of Jharkhand & Anr, **(2012) 12 SCC 72** after referring to various decisions, particularly pertaining to the police excess, summed up the guidelines in paragraph 32, which are extracted as under:

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

15. The Apex Court in a case titled G.C. Manjunath & Ors Vs. Seetaram reported as **2025 (5) SCC 390**, held that prior sanction under section 197 of the CrPC and Section 170 of the Karnataka Police Act is mandatory for prosecuting police officer for acts purportedly done in discharge of official duties, even if, such acts exceed, authority provided there is a reasonable nexus between the act and official duty.

16. In the case on hand, the respondent has filed the complaint against the conduct and remarks made about him by the police officer in connection with the investigation of the case. The respondent, a legal practitioner at Samba courts, claimed to have called the petitioner, who was investigating a case and on not entertaining him by the petitioner, some

altercations seem to have ensued between them, which, as per the respondent-complainant, was offensive, as such, he filed a complaint, which was entertained and cognizance was taken by the learned Magistrate vide impugned order, therefore, the offence, if any, had taken between the parties, it was regarding the investigation of the case being carried out by the petitioner as a police officer wherein the respondent, as a practising lawyer, wanted to interfere in the interests of his client resulting into unfortunate conversation between the two leading to the filing of a criminal case against the police officer. The development that had taken place was, thus, intrinsically related to the official duties of the petitioner as a police officer and to prosecute him for the commission of any offence in such a case, there is a requirement of prior sanction from the competent authority to launch prosecution against petitioner, which, in the instant case, was filed by the respondent against the petitioner before the court below without any prior sanction. The learned Magistrate also seems to be oblivious of his legal position, having not only entertained the complaint but issued process against the petitioner, of which he is rightly aggrieved of.

17. Having regard to the aforesaid discussion and the applicability of the law laid down by the Apex Court to the factual background of the case, this Court is of the considered opinion that the petitioner cannot be prosecuted without obtaining prior sanction. The entertainment of the complaint and issuing process thereon by the learned Magistrate is, thus,

an illegality committed by the learned Magistrate. The impugned order is, thus, liable to be quashed.

18. Viewed thus, the petition is **allowed**. The impugned order dated 26.03.2021 is quashed. Proceedings in complaint are ordered to be stopped, awaiting sanction to prosecute to be produced by the complainant.

19. The petition is, accordingly, disposed of along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
20.08.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**

