

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

CRREF No. 7/2022

State of J&K

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

Through: None

vs

Bashir Ahmed and another

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

25.09.2026

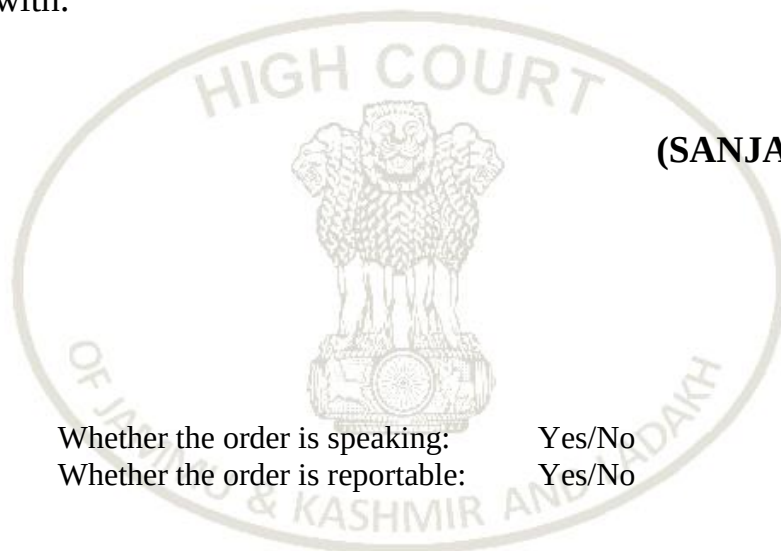
1. The instant reference has been made by the learned Additional Sessions Judge, Kathua(for short the reference court) on the ground that the cognizance of the case, which is subject matter of the reference, has been taken by the said court, has been taken in violation of section 195 of Cr.P.C. so far as it relates to offence under section 188 RPC.
2. I have perused the record sent by the reference court.
3. It appears that a challan arising out of FIR bearing No. 42/2013 of Police Station, Rajbagh for offences under section 188 RPC, section 3 PCA Act and section 3 PDPP Act came to be filed before the learned reference court. Cognizance of the offences was taken by the reference court on 26.08.2013 and the charges for offences under section 188 RPC, section 3 PCA Act and section 3 PDPP Act came to be framed by the learned reference court on 12.02.2014. The record further reveals that out of 10 witnesses cited in the challan, 03 prosecution witnesses

have already been examined. It is, at this stage that the learned reference court has expressed its opinion that the cognizance for offence under section 188 RPC has been taken in violation of the provisions contained in section 195 Cr.P.C, which provides that the cognizance of the offence under section 188 RPC cannot be taken, except on a complaint in writing of the concerned public servant. Learned reference court, after noticing this legal position, has made a reference to this Court with regard to the cognizance taken by the reference court.

4. In the present case, the FIR, which has been registered against the accused is not only in respect of offence under section 188 RPC but it is also in respect of certain other offences. Besides this, the accused have not objected to the framing of charge against them nor they have raised any objection with regard to taking of cognizance by the reference court. The issue, as to whether the cognizance of offence under section 188 RPC could have been taken by the learned reference court, without there being a written complaint from the relevant authority, can very well be determined by the learned reference court at the time of final disposal of the challan. It is not a case where said issue cannot be raised by the accused at the stage of final decision of the challan, which is still pending. It is always open to the criminal court to deal with the legality of the cognizance taken and the charges framed at the stage of final disposal of the challan.

5. In view of the above, the instant reference is declined. The original record is directed to be sent back to the court of Additional Sessions Judge, Kathua with a direction to proceed further in the matter in accordance with law. It is, however, made clear that the learned Additional Sessions Judge, Kathua shall be at liberty to deal with the legal issue that has been raised by the said court in the order of reference at the time of final disposal of the case. A copy of this order along with original record be sent back to the concerned court forthwith.

Jammu
25.09.2026
Rakesh PS



(SANJAY DHAR)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No