

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 941/2024

Ramesh Chander

.... Petitioner/Appellant(s)

Through: - Mr. Rajiv Kumar Sharma, Advocate

V/s

Shallu Sharma

.... Respondent(s)

Through: - Mr. Sumit Sharma, Advocate vice
Mr. Ashok Sharma, Advocate

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

ORDER
20.02.2026

1. Having heard learned counsel for the parties and perused the record, it emerges that the petitioner had instituted a complaint on 06.03.2024 before the Court of Judicial Magistrate, 1st Class, Akhnoor alleging commission of offences under Sections 403, 406 and 426 IPC against the respondent.

2. Upon presentation of the complaint, the learned Magistrate, instead of immediately issuing process, deemed it appropriate to postpone the issuance of process and directed the In-charge Police Station, Akhnoor to conduct an enquiry under Section 202 Cr.P.C. and submit a report. The matter thereafter remained pending awaiting receipt of the enquiry report. However, on 19.10.2024, the complaint came to be dismissed for want of prosecution. The said order forms the subject matter of challenge in the present petition.

3. The principal contention raised by the petitioner is that once the Magistrate had taken cognizance of the complaint for the limited purpose

of ordering an enquiry under Section 202 Cr.P.C., the complaint could not have been dismissed for non-prosecution, particularly when the enquiry report had neither been received nor considered. It is further contended that Section 256 Cr.P.C., which appears to have been invoked by the trial Court, was not applicable at that stage of the proceedings.

4. This Court finds merit in the submission advanced on behalf of the petitioner. Once the Magistrate had postponed the issuance of process and directed an enquiry under Section 202 Cr.P.C., the next procedural step required consideration of the report so submitted. It was only upon receipt and perusal of such report that the Magistrate could form an opinion whether sufficient grounds existed for proceeding against the accused or whether the complaint deserved dismissal under Section 203 Cr.P.C.

5. Even assuming that the enquiry report had been adverse to the complainant, principles of fairness demanded that the complainant be afforded an opportunity to address the contents thereof and satisfy the Court that there were sufficient grounds for proceeding. In the present case, the stage of consideration of the enquiry report had not even arisen, as the report was still awaited.

6. The record further reveals that the matter had been adjourned awaiting receipt of the enquiry report. It has been pointed out that on 28.09.2024, neither the complainant nor his counsel appeared, and the matter was adjourned. Subsequently, upon an application for preponement, the case was listed on 19.10.2024, on which date the complaint was dismissed for want of prosecution due to absence of the complainant.

7. However, the applicability of Section 256 Cr.P.C. arises only when the matter is fixed for appearance of the accused or on a subsequent date

after process has been issued. In the present case, neither had process been issued nor had the accused entered appearance. The proceedings were still at the pre-summoning stage, and issuance of process had been expressly postponed. Therefore, invocation of Section 256 Cr.P.C. was legally untenable.

8. Moreover, the personal presence of the complainant was not indispensable on the date when the complaint was dismissed. The complainant had already recorded his preliminary statement, and the matter was pending only for receipt of the enquiry report under Section 202 Cr.P.C. In such circumstances, dismissal of the complaint for non-appearance reflects non-application of mind and procedural irregularity.

9. The impugned order, therefore, suffers from legal infirmity and has resulted in miscarriage of justice, depriving the petitioner of his valuable right to have his complaint adjudicated in accordance with law.

10. For the foregoing reasons, the petition is allowed. The order dated 19.10.2024 passed by the learned Judicial Magistrate, 1st Class, Akhnoor dismissing the complaint for want of prosecution is quashed. The complaint is restored to its original position and shall proceed in accordance with law from the stage at which it stood prior to the passing of the impugned order.

11. The petition stands **disposed of** in the above terms.

(SANJAY PARIHAR)
Judge

JAMMU
RAM MURTI
20.02.2026