

S. No. 11
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 151/2025
CrIM No. (321/2025)

Faiz Ahmad Wani

...Petitioner/Appellant(s)

Through: Mr. Ubaid Mir, Advocate vice
Mr. Shariq Reyaz Jan, Advocate

Vs.

Union Territory of J&K And Anr.

...Respondent(s)

Through: Ms. Nowbahar Khan, Assisting Counsel

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

ORDER
15.09.2026

1. Heard both the counsel and examined the record. The complainant in the present case entered the witness box and was examined on 18.12.2019. During the course of his examination, he was declared hostile and was thereafter cross-examined by the prosecution as well as by the defence.
2. During the pendency of the proceedings arising out of the charge-sheet, the complainant moved an application seeking his recall and re-examination as a witness. The application was founded on the plea that, being unaware of the technical and legal implications of the manner in which his statement had been recorded, he subsequently obtained a certified copy of his deposition dated 18.12.2019 and was

surprised to learn that he had been declared hostile. It was further pleaded that, upon becoming aware of the legal consequences flowing from his earlier deposition, he sought permission of the Court to re-enter the witness box so as to clarify certain aspects arising out of his previous examination.

3. The application was opposed by the accused on the ground that once the complainant had been examined, declared hostile and thereafter cross-examined by the prosecution as well as by the defence, he could not be permitted to re-enter the witness box with a view to introducing a different version of events. It was contended that permitting such a course would cause serious prejudice to the accused. The learned Trial Court, by virtue of the order impugned, allowed the application and directed that the complainant be produced before the Court for his re-examination.
4. A perusal of the impugned order reveals that, in paragraphs 1 to 3 thereof, the Trial Court has merely noticed the submissions of the parties and the nature and contents of the application. Thereafter, the Court has proceeded to allow the application by observing, in substance, that since the complainant was stated to have been influenced prior to recording his deposition before the Court, his re-examination as a witness deserved to be permitted. The impugned order, however, is bereft of reasons. The Trial Court has not recorded any satisfaction as to the circumstances warranting the re-examination of the complainant, particularly when he had already been examined, declared hostile and thereafter subjected to cross-examination by both the prosecution and the defence. The order does

not disclose due application of mind to the relevant considerations governing the exercise of such power.

5. There can be no dispute that re-examination of a witness is permissible in law. Ordinarily, however, the object of re-examination is to explain matters referred to in cross-examination. Where, with the permission of the Court, a new matter is introduced during re-examination, the adverse party is entitled to further cross-examine the witness in respect of such matter.
6. The learned Trial Court does not appear to have adverted to the aforesaid legal position and has proceeded to allow the application in a routine manner, without recording reasons as to why the re-examination of the complainant was considered necessary in the facts and circumstances of the case. Such power cannot be exercised mechanically and must be exercised judiciously upon the Court being satisfied that sufficient grounds exist for permitting re-examination.
7. In view of the above, the impugned order, being unsupported by reasons and suffering from non-application of mind, cannot be sustained. It is, accordingly, set aside to the extent it permits the re-examination of the complainant. The matter is remanded to the Trial Court for consideration of the complainant's application afresh, in accordance with law. While doing so, the Trial Court shall also consider whether, in the facts and circumstances of the case, such an application could have been maintained at the instance of the complainant himself without the consent or concurrence of the Public Prosecutor.

8. Insofar as the application seeking to place on record the compromise deed stated to have been executed between the parties after presentation of the charge-sheet is concerned, the same also appears to have been disposed of by the Trial Court in a cursory manner. Although the motion in that regard was moved by the prosecution, the impugned order does not reflect due consideration of the relevant facts or the legal implications thereof. To that extent as well, the impugned order suffers from non-application of mind and is, accordingly, set aside. The learned Trial Court shall consider the said applications afresh, independently and in accordance with law, after affording due opportunity of hearing to the parties concerned.
9. The parties shall appear before the learned Trial Court on **05.10.2026**, whereupon the learned Trial Court shall proceed to consider and decide both applications afresh in accordance with law and in light of the observations made hereinabove.
10. The petition stands **disposed of** in the above terms.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:

15.09.2026

Akshil Dev