Serial No. 46
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Crl R 17/2023

UNION TERRITORY OF JAND K THROUGH SHO POLICE STATION KULGAM **… Petitioner(s)**

Through: Mr. Zahid Qais Noor, GA

Vs.

MUNEEB FAROOQ RESHI AND ANOTHER **...Respondent(s)**

Through: Mr. Ahmad Javid, Advocate

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

04.08.2025

1. Order dated 29.11.2022 passed by the Court of learned Principal Sessions Judge, Kulgam(for short the trial court) in case titled as ***"UT of J&K Vs. Muneeb Farooq Reshi &Anr"***. is thrown challenge to in the instant petition by the petitioner-UT of J&K through SHO P/S Kulgam.
2. Facts emerging from the record would reveal that the respondents herein came to be arraigned as accused persons in the FIR No. 31/2022 registered with P/S Kulgam, upon a complaint, for the commission of offences under section 341,325 and 307 IPC which culminated into filing of a charge sheet against the accused/respondents herein before the court of CJM on 16-09-2022 whereupon the same came to be committed to the trial court.
3. In the charge sheet supra, the case set up by the prosecution is that on 14.05.2022, the complainant along with his son namely Zaffer Ahmad Malla filed a written report before the Police Station concerned alleging therein that at around 8:00 pm in the evening, the accused/respondents

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unloaded gravel/bajri tractor on the lane adjacent to the fencing of the complainant and upon objecting to the same by the complainant, the accused-respondents herein made a fatal assault on the head of the son of the complainant by an iron rod resulting into a serious injury to him and that the complainant and his son came to be rescued by some pedestrians from the accused persons and consequently the FIR for commission of offences under section 341, 323 and 307 came to be registered against the accused/respondents herein and investigation set into motion, a site plan of the site was prepared as also an iron rod came to be presented by the complainant which was seized in presence of the witnesses inasmuch as an injury memo for getting the son of the complainant treated at Devsar Hospital was drawn and also the statement of the witnesses conversant with the facts of the case came to be recorded under section 161 CrPC and finally as per the medical opinion and the statement of the witnesses, the aforesaid offences were found to have been committed by the accused respondents. However, during the course of investigation, the involvement of one accused namely Tajamul Reshi S/o Farooq Reshi was not established, as such, the name of the said person was dropped from the list of the accused persons and that upon receipt of the medical opinion in the matter, offence under section 325 IPC was found established to have been committed by the accused persons instead of the offence under section 323 IPC.

4. After the committal of the charge sheet by the Court of the CJM, Kulgam to the trial court, the trial court considered the matter for framing of charge/discharge, and in terms of order dated 29.11.2022, impugned in the instant petition, dropped the offence under section 307 IPC against the accused/respondents herein, aggrieved whereof the petitioner herein has maintained the instant petition.

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5. The petitioner herein has maintained the instant petition, *inter alia,* on the ground that the impugned order is bad in the eyes of law having been passed by overlooking the material available on the file which rightly revealed the commission of the dropped offence under Section 307 IPC by the accused persons and that the nature of injury qua the offence under section 307 IPC was not relevant to be taken into account by trial court while passing the impugned order and that the trial court has sifted the evidence in disregard to the dictum of the Apex Court and lastly that the trial court has exceeded its jurisdiction while passing the impugned order and wrongly discharged the accused persons of the commission of offence under Section 307 IPC.

Heard learned counsel for the parties and perused the record.

6. Before proceedings to advert to the case set up by the petitioner, it would be appropriate to refer to the provisions of Section 227 and 228 of the Code of Criminal Procedure being relevant herein which reads as under:-

> *227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*
>
> *228.Framing of charge. - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -*
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the*

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case for trial to the Chief Judicial Magistrate, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

7. A plain reading of the aforesaid provisions would tend to show that the object and purpose of sections 227 and 228 supra is to ensure that the Court should be satisfied that the accusations made against an accused is not frivolous and that there is some material for proceeding against him. The Apex Court in case titled ***"Kewal Krishan Vs. Surag Bhan and Anr. reported in 1980 (supp) SCC 499"*** has ruled that section 227 of Cr PC is a beneficent provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial and that under Section 227, the court is merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and the sufficiency of groundswould take within its fold the nature of evidence recorded by the police or the documents produced before the court which *ex-facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him, and, if the evidence which the prosecution

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proposes to adduce to prove the guilt of the accused even if fully accepted before it challenged in the cross examination or rebutted by the defence evidence, if any, cannot show that the accused has committed the offence, then there will be no sufficient ground for proceeding with the trial.

It is also settled position of law that at this stage of framing of charge or for discharge of an accused, the defence on merits is not to be considered. The said view has been expressed by the apex court in case titled as ***"State of Rajestan Vs. Ashok Kumar Kashyap"***. It is to be kept in mind that the standard of test proof and judgment; which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at this stage of framing of charge or discharge of an accused in that while considering the question of framing of charge the court has the undoubted power to sift and weigh the material for the limited purpose of finding out whether or not a *prima faic*e case against the accused is made out.

8. Keeping in mind the aforesaid position and principles of law, and reverting back to the case in hand in the impugned order of discharge insofar as the offence under section 307 IPC is concerned, the trial court seemingly has taken into account the complaint filed by the complainant i.e, the father of the injured, wherein it had been specifically alleged by the complainant that the accused respondents hit the head of his son with an iron rod, whereas the record available on the file revealed that the injury form drawn and prepared during the course of investigation by the investigating agency as also the medical opinion furnished thereto by the doctor concerned provided that the victim injured have had not suffered any injury over his head but had sustained injury to his nose on account of hitting by a stone allegedly pelt by the accused persons, owing to which reason blood was found to be oozing out from the nose of the victim.

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Insofar as the offence of section 307 IPC is concerned, the act attempted must be such that if it is not prevented or intercepted same it would be sufficient to cause death of the victim and in order to sustain a conviction under section 307 IPC, the essential ingredient of intention and knowledge to kill should be clearly exist and consequently established, which intention or knowledge must be gathered from the facts and circumstances of the case and must be in furtherance of committing a murder.

9. A deeper and closer examination of the record available on the file in particular the evidence collected by the investigating agency during the course of investigation and produced in the shape of charge sheet before the trial court would manifestly tend to show that although the victim injured suffered an injury to his nose allegedly at the hands of the accused/respondents, yet there is no evidence muchless a cogent and credible on record suggesting the existence of essential ingredients intention and knowledge of the offence of section 307 IPC.

10. Record reveals that the trial court seemingly has not been oblivious to either the aforesaid principles and position of law inasmuch as the aforesaid position obtaining in the matter, and, therefore, seemingly has passed the impugned order rightly having not committed any illegality thereof.

11. Viewed thus what has been observed, considered and analyzed herein above, the impugned order does not call for any interference and consequently the petition is accordingly ***dismissed.***

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:
04.08.2025
"S.Nuzhat"

Whether the order is speaking Yes/No
Whether the order is reporting Yes/No

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