HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 24.02.2026
Pronounced on: 06.03.2026
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Whether the operative part or full order is pronounced: Full

Case No.:- CRMC No. 461/2018

Mohammad Yaseen and anr

.....Petitioner(s)

Through: Mr. Sumant Sudan, Advocate.

Vs

State of J&K

..... Respondent(s)

Through: Mr. Adarsh Bhagat, GA

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

JUDGMENT

1. The petitioners, through the medium of the present petition, have invoked inherent jurisdiction of this Court under Section 561-A of the Jammu and Kashmir Code of Criminal Procedure (now Section 528 of BNSS) seeking quashment of order dated 29.05.2018 passed by learned Sessions Judge, Kishtwar **("Revisional Court")** whereby order dated 13.06.2017 passed by learned Chief Judicial Magistrate, Kishtwar **("Trial Magistrate")** has been set aside and the learned trial Magistrate has been

directed to proceed against the petitioners/accused in accordance with law.

2. Briefly stated the facts leading to the filing of the present petition are that on 23.04.2012, petitioner No. 1-Mohd Yaseen, who was Investigating Officer in case FIR No. 03 of 2012 for offences under sections 376/363/109 RPC registered with Police Station, Kishtwar, brought seven accused including accused Shah Nawaz and Hussain Dar in proper custody before the court of learned trial Magistrate for the purpose of presentation of challan in the aforesaid case. When he opened the handcuffs of the accused, above named two accused fled away from the custody of the police and a report in this regard was received by the Police Station, Kishtwar on 24.04.2012. On the basis of the said report, FIR No. 93/2012 for offences under Sections 223/224 came to be registered by the police.

3. It also appears that learned trial Magistrate while entertaining the challan in case FIR No. 03 of 2012 of Police Station, Kishtwar, after noticing the fact that accused Hussain Dar and Shah Nawaj had escaped from the custody of the police during their production before the Court, directed SHO, Police Station, Kishtwar to lodge an FIR against the accused, who had escaped from the custody as also against the police officials

responsible for their escape. This was done in terms of order dated 24.04.2012 passed by the learned trial Magistrate.

4. After registration of the FIR, the investigation of the case was conducted. During investigation of the case, it came to the fore that the accused, who had escaped, were in fact not brought to the Court. It was found that the concerned police officials instead of confining the two escaped accused in the lockup of the police station, had kept them in the premises of the police station. While petitioner No. 1- ASI Mohammad Yaseen and Munshi of the police station, namely, petitioner No. 2-Waris Hussain Shah were busy in their official business, the two accused, namely, Shah Nawaz and Hussain Dar fled away from the premises of the police station. Thus, offence under Section 223 RPC was found established against the petitioners, who happen to be police officials and offence under section 224 RPC was found established against the accused Hussain Dar and Shah Nawaj. Accordingly, the challan was laid before the learned trial Magistrate.

5. Since the challan was presented before the court after the expiry of prescribed period of limitation, the learned trial Magistrate vide its order dated 06.04.2016, after recording the satisfaction that it is necessary to condone the delay in the

interests of justice, took cognizance of the offences and proceeded to issue process against the petitioners and the co-accused. When the petitioners appeared before the learned trial Magistrate, they sought their discharge on the grounds that provisions of Rule 349 of J&K Police Rules have not been adhered to in the present case and that previous sanction of the competent authority in terms of Section 197 CrPC has not been obtained before presentation of the challan against them. The learned trial Magistrate, vide his order dated 13.06.2017, accepted the contention of the petitioners and discharged them while proceeding against the other two accused, namely, Shah Nawaj and Hussain Dar.

6. The aforesaid order was challenged by the respondent-State by way of a revision petition before the Revisional Court. Vide impugned order dated 29.05.2018, the learned Revisional Court allowed the revision petition and set aside the order passed by the learned trial Magistrate of 13.06.2017. While doing so, the learned Revisional Court concluded that provisions of Section 197 CrPC have no applicability to the case of the petitioners as they are not public servants, who cannot be removed without the sanction of the Government. It has also been observed by the learned Revisional Court that the learned trial Magistrate did not

have power to discharge the petitioners as it was not a warrant trial case but it was a summons trial case and there is no provision in the Code of Criminal Procedure that vests power with a Magistrate to discharge the accused in a summons trial case.

7. The petitioners have challenged the impugned order passed by the learned Revisional Court on the grounds that Rule 349 of the J&K Police Rules is mandatory in nature and a police official against whom there is an allegation with regard to commission of offence under any of the provisions of Ranbir Penal Code cannot be prosecuted without the consent of the District Magistrate and this aspect of the matter has been overlooked by learned Revisional Court. It has been further contended that Section 249 of the J&K CrPC vests power with the Magistrate to close the proceedings at any stage if the Magistrate feels so. Thus, the observation of the learned Revisional Court that learned trial Magistrate did not have jurisdiction to discharge the petitioners is contrary to the legal position.

8. I have heard learned counsel for the parties and I have also gone through the material on record including the record of the trial Magistrate.

9. Before dealing with the merits of the case, it is necessary to deal with the objection of the respondents, which has found

favour with the learned Revisional Court that it was not open to the learned trial Magistrate to discharge the petitioners in a summons trial case as there is no provision in the Code of Criminal Procedure, which vests such power with the Magistrate.

10. It is not in dispute that the petitioners are facing prosecution for offence under Section 224 RPC, which carries a maximum punishment of two years simple imprisonment and, therefore, is governed by the procedure prescribed for summons trial cases. Chapter XX of J&K Code of Criminal Procedure, which would be applicable to the present case, governs the procedure for trial of summons cases by Magistrates.

11. In summons cases, no formal charge is required to be framed as in warrants cases. Once an accused appears before the Magistrate pursuant to filing of challan against him, the procedure prescribed under Chapter XX of J&K CrPC, which starts with Section 242 of the J&K CrPC has to be followed. As per the said provision, the substance of accusation is to be put to accused, which is technically similar to the framing of a charge in warrant cases. At this stage, it is mandatory for the Magistrate to hear the accused if he does not plead guilty. This is clear from the language of Section 244 of the J&K CrPC. Thus, accused is entitled to hearing at the stage of framing of a notice under

Section 242 of the J&K CrPC. At this stage, the trial Magistrate has to consider whether allegations leveled in the chargesheet would amount to an offence and if no offence is made out, then there are no particulars of the offence, which have to be read-over to the accused. Therefore, proceedings cannot proceed beyond the stage of Section 242 of the J&K CrPC.

12. This is clear from the plain reading of Section 242 of the J&K CrPC, which is reproduced as under:

> ***Substance of accusation to be stated***.-*When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.*

13. From the afore-quoted provision, it is manifest that when an accused is brought before the Magistrate, the particulars of the offence of which he is accused, have to be stated to him. If there are no particulars of the offence discernible from the allegations made in the chargesheet then there is no need to read over the same to the accused.

14. Section 249 of the J&K CrPC which falls under Chapter XX and, therefore, is applicable to summons cases vests power with a Magistrate to stop the proceedings. It reads as under:

> *"249. Power to stop proceedings, when no complaint.- In any case instituted otherwise than upon complaint, [a Judicial Magistrate of the first class, or with the previous sanction of the Chief Judicial Magistrate, any Judicial Magistrate of the second class] may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may there upon release the accused."*

15. From a plain reading of the aforesaid provision, it is clear that in a case instituted otherwise than upon complaint i.e., in a case where police has filed the challan, the trial Magistrate is vested with power to stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and release the accused but for doing so the Magistrate has to record reasons.

16. If we read the provisions contained in Section 242 of the J&K CrPC in conjunction with Section 249 of the J&K CrPC, it becomes manifest that if a Magistrate at the stage of framing a notice under Section 242 of the J&K CrPC is of the opinion that no offence is made out against the accused, particulars of which have to be read over to him, the Magistrate is vested with power to stop the proceedings in terms of Section 249 of the J&K CrPC.

17. In the above context, reliance is placed upon the ratio laid down by the Supreme Court in the case of **Bhushan Kumar**

& Ors Vs. State (NCT of Delhi) & ors, (2012) 5 SCC 422. In the said case, the Supreme Court has observed that it is the duty of the trial Magistrate under Section 251 of the Central CrPC (which is in *pari materia* with Section 242 of the J&K CrPC) to satisfy himself as to whether the offence against the accused is made out or not and to discharge the accused, if no case is made out against him. Para (20) of the said judgment is relevant to the context and the same is reproduced as under:

> *20) It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.*

18. It would also be apt to refer to the observations of the High Court of Delhi in the case of **S.K. Bhalla Vs. State & ors, 2011 SCC Online Del 2254** wherein the Court after noticing the ratio laid down by Supreme Court in **Adalat Prasad vs Roop Lal Jindal (2004) 7 SCC 338**, drew a distinction between dropping of proceedings after issuance of process against accused and

discharge of an accused at the stage of framing of notice under Section 251 of Central CrPC. The relevant extracts of the judgment are reproduced as under:-

> *13. From the above, it is obvious that the Supreme Court has held that once a process under Section 204 CrPC has been issued, the Trial Court cannot revert back to the stage of Section 203 CrPC and recall the issue of process against the accused as the Trial Court has no powers to review under the Code of Criminal Procedure.*
>
> *14. The facts of this case are distinct from the facts of Adalat Prasad Case (supra). In Adalat Prasad case (supra), learned Metropolitan Magistrate had recalled the summoning order by allowing the application under Section 203 CrPC after the issue of process under Section 204 CrPC. However, in the instant case, respondents No. 2 to 4 have been discharged by the learned Trial Court at the stage of serving of notice under Section 251 CrPC. At this subsequent stage, learned Metropolitan Magistrate was of the view that the charge sheet/complaint did not disclose necessary ingredient of the offence under Section 509 IPC, as such, he discharged the respondents No. 2 to 4 for the commission of abetment of offence under Section 509 IPC.*
>
> *15. Section 251 of the Code of Criminal Procedure deals with the stage subsequent to issue of process under Section 204 CrPC in a summons trial case. This section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge sheet/complaint/preliminary evidence recorded during enquiry disclose commission of a*

> *punishable offence. If the charge sheet/complaint does not make out a triable offence, how can a Magistrate state the particulars of non-existing offence for which the accused is to be tried. Therefore, it is inherent in Section 251 of the Code of Criminal Procedure that when an accused appears before the Trial Court pursuant to summons issued under Section 204 CrPC in a summons trial case, it is bounden duty of the Trial Court to carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.*

19. Again the High Court of Delhi has, in the case titled **Arvind Kejriwal & Ors Vs. Amit Sibal and anr, 2014 SCC Online Del 212,** after noticing the ratio laid down in the aforesaid judgments, explained the legal position on the issue at hand in the following manner:-

> *7. If the Magistrate cannot discharge the accused at the stage of framing of notice, the whole proceedings at the stage of framing of notice under Section 251 Cr.P.C. shall be reduced to mere formality and the accused would be compelled to approach the High Court to challenge the notice which would lead to multiplicity of litigation. It is for this reason, the Supreme Court in Bhushan Kumar (supra) and Krishan Kumar Variar (supra) has observed that the accused should approach the Trial Court instead of rushing to the higher Court. The Supreme Court has not restricted the directions in the aforesaid two cases to be applicable only to*

the warrant cases and therefore, the same are applicable to all summons cases including those arising out of complaints. In Bhushan Kumar (supra), the Supreme Court has specifically referred to Section 251 Cr.P.C. which deals only with summons cases. Relying on the aforesaid judgments, this Court, in Raujeev Taneja (supra) and Urrshila Kerkar (supra), has directed the accused to urge his objections before the Trial Court at the stage of framing of notice under Section 251 Cr.P.C.

20. In view of the authoritative pronouncements of the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra) and of this Court in Raujeev Taneja (supra), Urrshila Kerkar (supra) and S.K.Bhalla (supra), the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra).”

20. In view of the foregoing analysis of legal position, it can safely be concluded that in a summons case instituted otherwise than upon a complaint, Section 242 of the J&K CrPC read with Section 249 of the J&K CrPC clothes the trial Magistrate with the requisite power to discontinue further proceedings and release the accused at the stage of Section 242 of the J&K CrPC or later if the trial Magistrate feels that the allegations and the material placed before him do not justify continuance of the proceedings against the accused. A similar view has been taken by coordinate Benches of this court in the cases of **Mohan Singh Vs. State, 1988 SCC Online J&K 26 and State of J&K Vs. Qasim Ali & anr, 2003 SLJ 419.**

21. In view of aforesaid legal position, the finding of the learned Revisional Court that the learned trial Magistrate has travelled beyond his jurisdiction in discharging the accused/petitioners is not in accordance with the law.

22. That takes us to the second contention raised by the petitioners, which relates to applicability of the provisions contained in Rule 349 of the J&K Police Rules and the consequences of non-adherence to the said provisions. In the first instance, it would be necessary to notice the provisions

contained in Rule 349 of the J&K Police Rules. The same are reproduced as under:

> *Criminal offence by police officers and strictures by Court (1) Whenever a Superintendent of Police receives a complaint against a police officer that under colour of his duties he had committed an offence, as defined in the Ranbir Penal Code, the substance of the complaint shall be reported immediately to the District Magistrate who will decide whether the investigation of the complaint shall be conducted by a police Officer or by a Magistrate. If he decides that the investigation of a trial or an inquiry under the Criminal Procedure Code should be held by a Magistrate, he shall proceed according to the instructions laid down in the Guidance of Courts subordinate to the High Court. These instructions are quoted in Appendix XII.*
>
> *(2) When the District Magistrate decides that the matter shall be disposed of departmentally, the procedure prescribed in these rules for the holding of department enquiries shall be followed.*
>
> *(3) An inquiry shall be made in every case in which the conduct of a police officer is censured by a court (vide Appendix XIII). In all such cases, a copy of the judgment shall be sent to the District Magistrate who shall decide whether an inquiry is to be made departmentally or by a Magistrate. When such inquiry indicates the commission of an offence as defined in the Ranbir Penal Code, the procedure laid down in sub-rule (1) shall be followed. Where departmental inquiry is ordered, the result of the departmental inquiry shall be communicated to the District Magistrate.*
>
> *(4) Under rule 1(6) of Chapter XVI of the Rules and Orders (Criminal) for the Guidance of Courts Subordinate to the High*

> *Court, Magistrates are required to exercise care in making entries of censure on police officers in their judgments, and it is desirable that they should make remarks in criminal cases censuring the action of police officers only if they are supported by evidence given in the course of trial and are material to the decision. If remarks to which exception can be taken come to notice, they should be referred in the first instance to the District Magistrate."*

23. From a perusal of the aforesaid rule, it comes to the fore that where a Superintendent of Police receives a complaint against a police officer that under the colour of his duties he has committed an offence as defined in the Ranbir Penal Code, he has to submit a report to the District Magistrate, who has to decide whether the investigation of the complaint has to be conducted by a police officer or by a Magistrate. If the District Magistrate decides that investigation or trial or an inquiry should be conducted by a Magistrate in that case, the Magistrate has to proceed in accordance with the instructions laid down in the rules and orders (Criminal) for guidance of courts subordinate to the High Court which are quoted in the appendix of J&K Police Rules. The relevant portion of the appendix is reproduced as under:

> *"Whenever a complaint is filed against police officer that under the colour of his duties he has committed an offence as defined in the Ranbir Penal Code, the Magistrate, unless he*

is himself a first class Magistrate, shall record the statement of the complainant and report the case at once to the District Magistrate to whom he may be subordinate. He will direct the complainant to appear before him on a date to be fixed with due regard to the time by which he may hear from the District Magistrate. On the appearance of the complainant, the Magistrate shall inform the complainant of orders passed by the District Magistrate. The District Magistrate on receipt of such a report as to a complaint will either hear the case himself or transfer it to a Magistrate with first class powers who will proceed according to law.

If the Magistrate be himself a Magistrate of the first class he will report the substance of the complaint against the police officer to the District Magistrate and will proceed with the case in accordance with the law.

The Magistrate hearing the complaint shall send the copy of it to the Deputy Inspector General of Police for his information.

No case against the police officer shall be tried summarily."

24. As per the afore-quoted instructions, if the Magistrate before whom a complaint is filed against a police officer that he has committed an offence defined in Ranbir Penal Code under the colour of his duties, such Magistrate has to record statement of the complainant and report the substance of the complaint against the police officer to the District Magistrate to whom he may be subordinate and thereafter proceed with the case in accordance with law.

25. Turning to the facts of the present case, it appears that FIR against the petitioners came to be lodged on the basis of report received by the SHO with regard to escape of two accused, namely, Shah Nawaj and Hussain Dar. It is amply clear from a perusal of the challan that the FIR has not been registered pursuant to the directions of the learned trial Magistrate but it has been registered on the basis of the report received by the SHO with regard to escape of two accused, namely, Shah Nawaz and Hussain Dar. Thereafter, the SHO also received copy of order dated 24.04.2012 passed by the learned trial Magistrate but the fact of the matter remains that the FIR has been registered on the basis of report received by the SHO from a source other than the order of the trial Magistrate. In these circumstances, it was incumbent upon SHO of police Station, Kishtwar to inform Superintendent of police concerned who, in turn, was duty bound to place the substance of complaint immediately before the District Magistrate.

26. It is pertinent to mention here that the petitioners, who are police officials, are alleged to have committed offence under section 223 of RPC which, by its nature, is an offence, which can be committed by a police officer only under the colour of his duties. However, in the present case, the Superintendent of

police has not laid the report with regard to commission of offence by the petitioners before the District Magistrate and therefore, there was no occasion for the District Magistrate to take a decision whether the investigation of the complaint should be conducted by a police officer or the investigation, trial or inquiry under the Code of Criminal Procedure should be held by a Magistrate. In these circumstances, the provisions contained in Rule 349 of the J&K Police Rules have been observed in breach by the police authorities.

27. Learned counsel for the respondents has contended that the FIR in the instant case has been registered pursuant to the directions of the learned trial Magistrate issued in terms of Section 156(3) of the CrPC and, therefore, there was no option for the police authorities but to register an FIR and undertake investigation of the same. The argument appears to be attractive at its first blush but when analyzed closely, the same does not hold any water. This is so because the FIR in the instant case has not been registered on the basis of directions of Magistrate but it has been registered on the basis of information received by the police prior to receipt of directions of the Magistrate.

28. Even if it is assumed that the FIR has been registered under the directions of the Magistrate, still then the learned trial

Magistrate while issuing such directions has observed the provisions of Rule 349 of the J&K Police Rules in breach. Appendix to the said rules clearly provides that if the Magistrate happens to be the Magistrate of first class, he has to report the substance of complaint against the police officer to the District Magistrate and thereafter proceed in accordance with law. Admittedly, in the instant case, the learned trial Magistrate while directing registration of the FIR against the police officers, who had committed dereliction of duty, did not report the substance of complaint against such police officers to the District Magistrate. Without doing so, he proceeded to pass directions upon the police to register an FIR. Thus, even the learned trial Magistrate has flouted the provisions of Rule 349 of the J&K Police Rules read with appendix thereto.

29. The question that arises for determination is as to whether mere non-adherence to provisions contained in Rule 349 of the J&K Police Rules would be a good enough ground to quash the prosecution against the petitioners.

30. In the above context, if we have a look at the provisions contained in Rule 349 of the J&K Police Rules, it becomes clear that same are mandatory in nature. Sub Rule (1) of Rule 349 clearly uses the expression **"shall"**, thereby making it incumbent

upon the Superintendent of Police to report substance of the complainant against a police officer, who has committed an offence under Ranbir Penal Code under the colour of his duties, to the Magistrate. Similarly, appendix to said Rule also uses the expression **"will"** thereby making it incumbent upon the Magistrate of first class to report the substance of complaint against the police officer to the District Magistrate while proceeding in the case in accordance with law. The use of expressions **"shall"** and **"will"** clearly indicate the intention of the framers of the Rules that the said Rule is mandatory in nature.

31. In my aforesaid view, I am supported by the Division Bench judgment of this Court in the case of **State of J&K Vs. Gula Khan, 1981 (2) SLR 278.** In the said case, the Division Bench, wile answering the question whether the provisions of Rule 349 of J&K Police Rules are mandatory in nature, has observed as under:

> *11. The use of the words "shall be reported immediately to the District Magistrate" in sub-rule (1) is significant. They are strongly imperative. The implication clearly is that the appropriate authority is not left with any discretion, in a proper case, to refer or not to refer the case to the District Magistrate. The principle to be applied to the construction of this sub-rule should be that if the statute*

requires a thing to be done in a particular manner, then it must be done in that manner and in no other manner. In this view we are of the opinion that sub-rule (1) is mandatory and that its non-compliance would render the action invalid.

32. A Single Bench of this Court in the case of **G.S. Broca Vs. State of J&K & ors, 1974 J&KLR 350** has, while holding that provisions of Rule 349 of the J&K Police Rules are mandatory, observed that there is a definite purpose behind the enactment of the said rule. While holding so, the court observed as under:

"Mr. Anil Dev Singh, however, argued that rule 349 of the Police Rules is only directory and not mandatory and an enquiry held in violation thereof cannot be allowed to frustrate and that no challenge could be thrown to the validity of the order impugned in the petition on that point. This contention of the Assistant Advocate General, (Mr. Anil Dev Singh), cannot be allowed to prevail. There was a definite purpose behind the enactment of Rule 349 of the Police Rules. The discretion given to the District Magistrate to decide as to the forum and the manner of the enquiry was intended to serve as a check against on arbitrary action of a superior police officer against a subordinate officer. The District Magistrate had to decide on a consideration of the facts of the case as to whether the enquiry should be held departmentally under the Police Rules or not and in case his decision was against the holding of a departmental enquiry there would have been no occasion for departmental enquiry having been held at all. This view regarding the provisions of the Rule 349 of

the Police Rules being mandatory is supported by a judgment of the Supreme Court in Union of India V. Ram Kishan. In that case the Supreme Court was called upon to decide as to whether Rule 16.38 Sub-rule (1) of the Punjab Police Rules was mandatory or directory. Relying on an earlier judgment of the Court the Supreme Court held that the non-compliance with the provisions of that Rule rendered the order of dismissal passed against the servant wholly illegal. Rule rendered the order of dismissal passes against the servant wholly illegal. Rule 16.38 of the Punjab Police Rules is on the same lines as Rule 349 of the State Police Rules. The Judgment of the Supreme Court, therefore, applies with full force to the facts of the present case. I have no option therefore but to hold that the enquiry which formed the basis of the impugned order in this petition was in violation of Rule 349 of the Police Rules and therefore the enquiry as also the order based thereupon must fall."

33. From the foregoing analysis of legal position, it is clear that provisions contained in Rule 349 of the J&K Police Rules is mandatory in nature and unless the substance of complaint against a police officer, who is alleged to have committed an offence under Ranbir Penal Code under the colour of his duties, is reported to the District Magistrate either by the police or by the Judicial Magistrate first class before whom the complaint against such police officer is made, the action of the police or the Judicial Magistrate first class would become invalid.

34. It is to be noted that provisions contained in Rule 349 of the J&K Police Rules have been incorporated with the definite purpose to provide protection to police officers against frivolous and vexatious complaints. The District Magistrate has been vested with the vital role to decide, on consideration of the facts and circumstances of the case, whether the matter requires to be dealt with by a Magistrate in accordance with the provisions of Code of Criminal Procedure or a case is required to be registered or in the alternative whether it is a case where departmental proceedings are required to be initiated against the concerned police officer. The provisions of Rule 349 of the J&K Police Rules acts as a filter against motivated complaints that may be lodged against the police officers. False and vexatious complaints are generally expected to be filed against the police officers having regard to nature of their duties, which they are discharging. Rule 349 of the Police Rules is a protection made available to the police officers against false and frivolous complaints. Without adhering to the provisions contained in Rule 349 of the J&K Police Rules, prosecution cannot be launched against a police officer, who is alleged to have committed an offence as defined in the Ranbir Penal Code under the colour of his duties.

35. In the present case, the provisions contained in Rule 349 of the J&K Police Rules have been given a complete departure by the Superintendent of Police concerned as also by a learned trial Magistrate while proceeding against the petitioners. This aspect of the matter has not been considered by the learned Revisional Court at all while entertaining challenge to the order passed by the learned trial Magistrate. The impugned order passed by the Revisional Court is, therefore, not sustainable in law.

36. For what has been discussed hereinbefore, the petition is allowed and the impugned order passed by the Revisional Court is set aside and the order passed by the learned trial Magistrate is up-held.

37. Disposed of accordingly.

(SANJAY DHAR)
JUDGE

JAMMU
06.03.2026
Naresh/Secy

Whether order is speaking: Yes
Whether order is reportable: Yes

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