

**State Vs. Prem Sagar**

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**SooperKanoon Citation :** [sooperkanoon.com/901042](http://sooperkanoon.com/901042)

**Court :** Jammu and Kashmir

**Decided On :** Nov-07-2001

**Reported in :** 2002CriLJ4640

**Judge :** R.C. Gandhi, J.

**Acts :** Ranbir Penal Code (IPC) - Section 457; ;Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 - Sections 173, 251A, 251A(2) and 251A(3)

**Appeal No. :** Writ Petn. No. 17 of 2001

**Appellant :** State

**Respondent :** Prem Sagar

**Advocate for Pet/Ap. :** Swami Raj Sharma and; V.B. Gupta, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**R.C. Gandhi, J.**

1. This Criminal Reference has arisen out of an order dated 30-5-1994 passed by the learned Judicial Magistrate 1st Class, Basohli, whereby he has discharged the accused and dismissed the challan presented by the police for prosecution of the

accused under Section 457, RPC.

2. This order was assailed in Revision Petition before the learned Chief Judicial Magistrate, Kathua who set aside the order of the learned Judicial Magistrate 1st Class, Basohli. The order of the learned Chief Judicial Magistrate was assailed before this Court by means of a Criminal Revision No. 89 of 1994, on the ground that the learned Chief Judicial Magistrate, Kathua has no power to set aside the order of learned Magistrate and he ought to have made reference to the High Court, in case the order of Magistrate warranted any modification/alteration. While noticing this legal defect in the order of the learned Chief Judicial Magistrate, Kathua, the High Court set aside his order and remanded the case back.

3. The learned Judicial Magistrate 1st Class, Basohli while dealing with the challan at the stage of charge and discharge and on appreciation of the documents and other evidence presented before him in terms of Section 173, Cr.P.C. has come to the conclusion that case for framing of charge is not made out and discharged the accused.

4. The learned Chief Judicial Magistrate, Kathua has made a recommendation to set aside the order of the learned Magistrate on the ground that complainant has not been heard which was required before recording the order of discharge. According to the order of learned Chief Judicial Magistrate, opportunity of hearing not having been provided to the complainant, the order of the learned Magistrate suffers from illegality and, thus, is liable to be set aside.

5. The learned Magistrate was required to comply with the provisions of Sub-sections (2) and (3) of Section 251A, Cr.P.C. at the stage of charge and discharge. For facility of reference Sub-sections (2) and (3) are reproduced below :

Section 251-A (2) If upon consideration of all the documents referred in Section 173 and making such examination, if any, of the accused the Magistrate thinks necessary and after giving prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused groundless he shall discharge him.

(3) If upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard the Magistrate is of the opinion that there is ground, for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame in written a charge against the accused.

6. The learned Magistrate was required to consider documents presented before him in terms of Section 173, Cr.P.C. which he has considered. The law also enjoined upon the learned Magistrate that while making examination and consideration of the documents, if he thinks necessary, to provide an opportunity to the prosecution and the accused of being heard. After doing so, if, according to him the charge is groundless then he shall record the order of discharge. This process is required to be followed by the Magistrate as provided under Section 251-A, Cr.P.C. He has provided opportunity both to the prosecution and accused which is evident from the impugned order. This process has been followed by him. It was not legally obligatory upon him to provide an opportunity to the complainant, besides the prosecution. The learned Chief Judicial Magistrate, Kathua has not made out by reference of any law that despite having heard the prosecution, the complainant was still additionally to be heard. It appears to be not the requirement of law.

The Criminal Reference, therefore, on the ground that complainant has not been provided with an opportunity of being heard cannot be maintained and is, accordingly, rejected.