

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**CRMC No. 641/2015  
IA No. 1/2015**

Bharat Bhushan Jolly and ors.

.....Appellant(s)/Petitioner(s)

Through: Mr. Aman Bhagotra, Advocate

**Vs**

State of J&K and ors.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG for R-1  
None for R-2 to 5  
Mr. Rajnish Raina, Advocate for R-6

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**05.09.2024**

**Oral**

1. Inherent power of this Court enshrined in Section 561-A Cr. P.C. (now Section 528 BNSS) has been invoked by the petitioners for quashing order dated 18.12.2015 (For short 'impugned order') passed by the Judicial Magistrate Ist Class (Electricity), Jammu (For short 'The Magistrate') in case titled as '*State vs. Vipul Kohli & Ors*'.
2. The facts giving rise to the filing of the instant petition as stated therein are that respondent 6 herein got married to respondent 3 herein on 19.06.2010 and that the petitioners herein are the relatives of respondent 3 herein being his maternal uncle, maternal aunt and their son in law and daughter respectively and that respondent 6 herein lodged a complaint against the petitioners and respondents 2 to 5 herein on 11.12.2014 before the Magistrate under Section 156(3) Cr. P.C. alleging therein commission

of offences under Section 498-A and 109 RPC which complaint upon being forwarded by the Magistrate to respondent 1 resulted into registration of FIR No. 114/2014 for offences under Section 498-A and 109 RPC against the petitioners and respondents 2 to 5 herein, whereupon after concluding the investigation therein in the said FIR, charge sheet came to be laid against the petitioners herein as also respondents 2 to 5 herein before the Magistrate and whereafter, the petitioners herein being accused persons therein in the said charge sheet sought their discharge on the ground that the allegations leveled against them in the charge sheet are false and frivolous without there being any specific allegation leveled by the complainant-respondent 6 against them, whereupon the Magistrate after hearing the appearing counsel for the accused petitioners as also the PP, in terms of order dated 18.12.2015 rejected the plea of accused petitioners herein for their discharge and held there to be sufficient material against the accused persons for framing of charge.

3. The accused petitioners herein have challenged the order dated 18.12.2015 supra in the instant petition, *inter alia*, on the grounds that the Magistrate failed to take notice of the facts and circumstances of the case in particular that the complainant-respondent 6 herein had neither attributed any incident of violence committed upon her by the petitioners herein nor commission of any physical or mental torture including a demand of dowry and that since there was no act attributed to the petitioners constituting the alleged offences committed by the petitioners herein, the Magistrate while declining to discharge the petitioners in terms of the impugned order caused miscarriage of justice.

4. **Response** to the petition has been filed by respondent 6 herein wherein the petition is being opposed on the premise that not only the accused husband of the petitioner being respondent 3 herein, but also other accused persons including the petitioners herein pressurized and demanded the dowry from the complainant/respondent 6 after marriage and continued to make such demands as well as tortured physically and mentally the complainant-respondent 6 herein and that the accused persons encouraged respondent 3 herein as also other accused persons to commit illegal acts upon her and her minor son.

**Heard learned counsels for the parties and perused the record.**

5. Before proceeding to advert to the petition in hand, it would be appropriate to refer hereunder the relevant provision of law relating to the discharge of an accused:-

**251-A. Procedure to be adopted in cases instituted on police report.-**

- (1) When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of a trial, such Magistrate shall satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.
- (2) If, upon consideration of all the documents referred to in section 173 and making such examination, if any of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

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A bare perusal of the aforesaid provision reveals that upon a case instituted on a police report, if upon consideration of the documents and after providing an opportunity of hearing to the prosecution as also the accused, it appears to the Magistrate that the charge against the accused is groundless, the Magistrate can discharge the accused, meaning thereby that if the Magistrate is of the opinion that prima facie the case against the accused exists, the charge has to be framed and for the said purpose as also for discharge of an accused, the case set up by the prosecution including the statement of the witnesses on record ought to be taken on their face value without judging the truth and veracity of the same. Thus what is sine-qua-non at the stage of framing of charge or discharge of an accused, there has to be proper application of mind by the Magistrate and the tests regarding sufficiency of proof which the court is required to apply at the final disposal of the case are not to be applied at the stage of framing of charge and discharge of an accused. Furthermore, the Magistrate at the stage of framing of charge or discharge is not required to scan the evidence minutely, but has to see whether the evidence collected during the investigation by the prosecution, if remains unchallenged is sufficient to convict the accused.

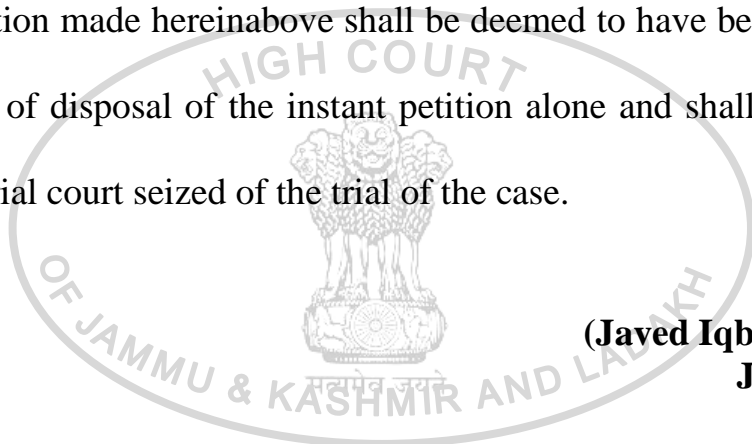
6. Keeping in mind the aforesaid position of law and reverting back to the case in hand, perusal of the charge sheet available on the file manifestly reveals that the specific allegations of cruelty, torture inasmuch as harassment leveled by the complainant-respondent 6 herein against the accused persons including the petitioners herein have been found to be established. A deeper and closer examination of the same is found to be

manifest thereof. Under these circumstances, the contention of the accused petitioners herein that there has been no specific allegation leveled against them by the complainant/respondent 6 herein constituting the commission of alleged offences is grossly misconceived, so is the plea/contention of the accused petitioners herein that they never resided with the complainant/respondent 6 herein after her marriage with respondent 3 herein and that they had no involvement whatsoever in the entire matrimonial affair of the complainant-respondent 6 herein and respondent 3 herein as the complainant-respondent 6 herein has detailed out in the complaint the specific allegations constituting the commission of alleged offence against the accused petitioners, as such, the plea of the accused petitioners that such allegations did not constitute the commission of the alleged offences against them on the ground of being distantly related to respondent 3, husband of the complainant-respondent 6 herein becomes insignificant and irrelevant.

Be that as it may, this Court refrains from making any observation as to the veracity of the case set up by the prosecution against the petitioners while dealing with the instant petition filed by the accused petitioners against the impugned order whereunder the Magistrate has declined to discharge them of the offences alleged to have been committed by them and had proceeded to frame charge against them, in that, law is settled that the ambit and scope of inherent power vested in this Court has to be exercised on rare occasions and in exceptional cases more particularly in case of framing of the charge or a case of refusal of discharge of an accused. A reference in this regard to the judgment of the Apex Court

passed in case titled as ‘**State of Delhi Vs. Gyan Devi and ors.**’ reported in **(2000) 8 SCC 239** as also in case titled as ‘**State of Maharashtra Vs. Salman Salim Khan & Anr.**’ reported in **(2004) 1 SCC 525** would be relevant.

7. Viewed thus, this Court is of the considered opinion that the impugned order does not call for any interference by this Court in exercise of inherent power which indisputably is neither appellate nor revisional in nature and character.
8. Resultantly, the petition fails and is **dismissed**. It is however made clear that nothing hereinabove shall be construed to be expression of an opinion qua the merits of the case pending trial before the trial court and any observation made hereinabove shall be deemed to have been made for the purpose of disposal of the instant petition alone and shall not be binding on the trial court seized of the trial of the case.



**(Javed Iqbal Wani)**  
**Judge**

**Jammu**  
05.09.2024  
*Neha-II*

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