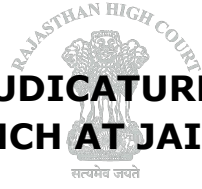




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 61/2025

Devesh Sharma S/o Shri Shivshankar Sharma, Aged About 35 Years, R/o 51, Old Akashwani Colony, Behind J.D.B. College, Nayapura, Kota- 324001, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Victim

-----Respondents

For Petitioner(s) : Mr. Vivek Raj Singh Bajwa, Sr. Adv.  
assisted by Mr. Sandeep Pathak,  
Mr. Amar Kumar and  
Ms. Savita Nathawat

For Respondent(s) : Mr. Jitendra Singh Rathore, PP with  
Ms. Neha Goyal  
Mr. S. Gharana with  
Ms. Namrata Shrey,  
Mr. Ankur Nagar and  
Ms. Jyoti Gupta

**JUSTICE ANOOP KUMAR DHAND**

**Order**

**21/04/2026**

Reportable

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 09.12.2024 passed by the Additional Sessions Judge No.6, Jaipur Metropolitan-I (hereinafter referred to as 'Revisional Court') in Criminal Revision Petition No.13/2024, by which the revision petition submitted by the complainant-respondent has been allowed and the order dated 08.01.2024, passed by the Metropolitan Magistrate No.8, Jaipur Metropolitan-I in the



proceedings arising out of FIR No.23/2021 and FR No.01/2023 registered with the Police Station Shipra Path, Jaipur City (South) has been set aside and the matter has been remanded back to the learned Magistrate to pass fresh orders after hearing both the sides.

2. Learned counsel for the petitioner submits that the complainant-respondent No.2 has lodged FIR No.23/2021 with the Police Station Shipra Path, Jaipur City (South) against the petitioner for the offences punishable under Sections 376(2)(n) and 420 IPC with the allegations that the petitioner developed physical relationship with her on the pretext of false promise of marriage. Counsel submits that the victim is in habit of lodging similar kind of FIRs against different persons, across the country. He has given reference to as many as 16 such different instances by way of filing a detailed compilation. Counsel submits that in five cases, similar allegation of rape has been levelled by the prosecutrix against different accused persons, and it has been averred that on the pretext of false promise of marriage, all of the accused persons developed physical relationship with the prosecutrix and committed rape upon her. Counsel submits that in all the above mentioned instances, either the proceedings of the aforesaid cases were quashed or the matters resulted in acquittal of the concerned accused persons. Counsel submits that in one of the matters, proceedings under Section 344 Cr.P.C. were ordered to be initiated against the prosecutrix and she was found guilty of the same and ultimately punished with a fine of Rs.500/- along with simple imprisonment till rising of the Court by the Additional





Sessions Judge, Gurugram vide order dated 08.03.2022 in CIS No.49/2022.

3. Counsel further submits that the instant case is a glaring example of repetition of lodging of identical false cases by the respondent-prosecutrix. Counsel submits that taking the aforesaid aspect of the matter into consideration, the Police submitted Final Report (Negative) in favour of the petitioner, giving reference of all the above cases and finding no *prima facie* case against the petitioner for the allegations of committing alleged offences, as levelled by the prosecutrix. He submits that against the aforesaid Final Report, a protest petition was filed by the prosecutrix before the Court of Metropolitan Magistrate No.8, Jaipur Metropolitan-I, wherein her statements along with other witnesses were recorded under Section 200 and 202 Cr.P.C. and the learned Magistrate vide order dated 08.01.2024, accepted the Final Report (Negative) and rejected the aforementioned protest petition submitted by the complainant-respondent. Counsel submits that the aforesaid order was assailed by the complainant-respondent before the Revisional Court i.e. Additional Sessions Judge No.6, Jaipur Metropolitan-I and the same came to be allowed vide order impugned dated 09.12.2024 and the matter has been remitted to the learned Magistrate for deciding it afresh after hearing both the sides.

4. Counsel submits that while passing the aforesaid remand order, the learned Revisional Court was of the view that two separate orders were required to be passed by the learned Magistrate; one on the Final Report (Negative) submitted by the police and another on the protest petition submitted by the complainant-respondent. Counsel submits that this fact has been





recorded by the leaned Revisional Court in para 35 and 37 of the impugned order. The aforesaid impugned order passed by the Revisional Court is contrary to the provisions of Cr.P.C. as it is settled proposition of law that whenever Final Report (Negative) is submitted, the Magistrate is supposed to issue notice to the complainant to submit objections against such final report and in case, any protest petition is filed, then the procedure is required to be followed by recording statements of the complainant and the witnesses, if any, under Section 200 and 202 Cr.P.C. He submits that after following the aforesaid procedure, a reasoned and cogent order was passed by the leaned Magistrate accepting Final Report (Negative) and rejecting the protest petition submitted by the complainant. Hence, under these circumstances, the impugned order of remand passed by the Revisional Court is not sustainable and is liable to be quashed and set-aside.

5. In support of his contentions, counsel has placed reliance upon the judgment passed by the Madhya Pradesh High Court at Jabalpur in the case of **Jitendra Kumar Mishra vs. The State of Madhya Pradesh and Another** while deciding **Misc. Criminal Case No.38157/2023** vide order dated 30.11.2023 and the judgment passed by the Karnataka High Court at Bengaluru in the case of **Sri Viveka P.K. and Others vs. The State of Karnataka and Another** reported in **2024 SCC OnLine Kar 30627**.

6. Lastly, he argued that in view of the submissions made herein above, the impugned order passed by the Revisional Court be quashed and set-aside.





7. *Per contra*, learned Public Prosecutor as well as counsel appearing on behalf of the complainant opposed the arguments raised by counsel for the petitioner and submitted that when the impugned FIR was registered, the matter was investigated by the concerned Investigating Officer and *prima facie* case was found to be proved against him. Later on, the matter was handed over to the Special Investigation Unit for Crimes Against Women (SIUCAW) by the Police Commissioner, who has not investigated the matter in a proper and thorough manner and neither the potency test of the accused was conducted, nor his garments were seized. The Final Report (Negative) was submitted in the matter not on merits, but on a technical ground that the prosecutrix is in a habit of lodging similar kind of criminal cases with similar kind of allegations. Counsel submits that the allegation of rape is verified from the Forensic Science Laboratory (FSL) report, wherein human semen was found on the private parts of the body of the prosecutrix. Counsel further submits that at the stage of taking cognizance, the defence of the accused is not required to be looked into and only *prima facie* case is required to be seen. *Prima facie* evidence is there against the petitioner in the FIR as well as in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C., which reveal allegation of commission of cognizable offence. Counsel submits that under these circumstances, the Magistrate committed an error in accepting the Final Report and rejecting the protest petition submitted by the prosecutrix. Counsel submits that the Revisional Court has not committed any error in quashing and setting-aside the order passed by the learned Magistrate and remanding the matter back





to the learned Magistrate for passing fresh orders. At this stage, the petitioner would have ample opportunity to putforth his case before the learned Magistrate. Hence, under these circumstances, there is no illegality in the order passed by the Revisional Court, which warrants any interference of this Court and instant petition is liable to be rejected.

8. In rebuttal, Mr. Bajwa, Sr. Adv. submits that the instant case is a case of consensual relationship and the petitioner has not engaged in forceful sexual intercourse with the prosecutrix. As per the conduct of the prosecutrix, she levelled similar kind of allegations against one Ajay Meena by lodging FIR No.69/2021 on 12.2.2021 and against the petitioner on 07.01.2021. In both these FIRs, similar allegations have been levelled, alleging that the petitioner as well as the other accused Ajay Meena promised her to marry and on the pretext of marriage, physical relationship was established with the prosecutrix. Counsel submits that the provisions contained under Section 90 of IPC would not come into picture. Counsel further submits that in the case registered against the aforementioned accused Ajay Meena with Police Station Pachore, Rajgarh, Madhya Pradesh, he has been acquitted vide judgment dated 6.12.2024.

9. Heard and considered the submissions made at the Bar and peruse the material available on the record.

10. Perusal of the record indicates that the prosecutrix has lodged impugned FIR No.23/2021 against the petitioner with the Police Station Shipra Path, Jaipur City South for the offences punishable under Sections 376(2)(n) and 420 of the Indian Penal Code. The aforesaid FIR resulted in Final Report (Negative) in



favour of the petitioner. When the Final Report (Negative) was presented before the Court of Metropolitan Magistrate No.8, Jaipur Metropolitan, notices were issued to the prosecutrix to submit objections, if any, against the aforesaid FR. Under these circumstances, the prosecutrix submitted protest petition and thereafter, her statements were recorded under Section 200 Cr.P.C. and statements of other witnesses were recorded under Section 202 Cr.P.C. The learned Magistrate, on the basis of the material available on the record, came to the conclusion that no *prima facie* case is made out against the petitioner for taking cognizance against him. Hence, a protest petition was submitted by the complainant-respondent and the same was rejected and the Final Report submitted by the police, was accepted vide order dated 08.01.2024.

11. Aggrieved by the aforesaid order, a revision petition was submitted by the complainant-respondent before the Court of Additional Sessions Judge No.6, Jaipur Metropolitan-I and the same has been allowed vide impugned order dated 09.12.2024 by which the order dated 08.01.2024, passed by the Metropolitan Magistrate No.8, Jaipur Metropolitan has been quashed and set-aside with a direction to pass fresh orders, after hearing both sides again.

12. The reason for passing the aforesaid impugned order has been recorded in para Nos. 35 and 37 of the impugned order, wherein, the learned Revisional Court was of the opinion that whenever Final Report (Negative) is submitted by the police and protest petition is submitted by the complainant against such Final Report, the Magistrate is required to pass order on Final Report





first and thereafter, the protest petition is required to be decided after conducting an inquiry under Section 200 and 202 Cr.P.C. and after conclusion of such inquiry, the order is required to be passed, but in the instant case, instead of following the aforesaid procedure, a common order has been passed on the final report and protest petition submitted by the police and the complainant respectively. Such finding has been recorded by the Revisional Court in para 35 and 37 of the impugned order. The Revisional Court was of the view that whenever Final Report is submitted, an opportunity is granted to the complainant for hearing by way of asking him/her to submit protest, if any, but the learned Magistrate is not supposed to pass a common order on FR and protest petition. Hence, the learned Revisional Court was of the view that the procedure prescribed under Chapter XIV and the provisions contained under Sections 200 and 202 Cr.P.C. were not followed.

13. Relying upon the judgment passed by the Hon'ble Apex Court in the case of **Jamuna Singh And Others vs Bhadai Shah** reported in **AIR 1964 SC 1541**, the impugned order passed by the learned Magistrate has been quashed and set-aside with a direction to the learned Magistrate to pass fresh orders after hearing both sides again.

14. In the light of the submissions made by the counsels appearing for rival sides, a short question which arises for consideration in this petition is:

“What is the legal procedure and the nature of the judicial order required to be passed by a Magistrate under the Code of Criminal Procedure (now Bhartiya Nagrika Suraksha Sanhita) when Final Report





(Negative) is submitted by the Investigating Officer by not finding any case against the accused?"

15. Before expressing any opinion upon the above question, it will be appropriate to ponder upon the procedure provided by the Cr.P.C. regarding the powers which a Magistrate is bound to exercise after submission of report under Section 173(2) Cr. P.C.

16. Upon the procedure to be adopted by Magistrate after submission of a police report (formerly under Section 173 of the Cr.P.C., now governed by Section 193 of the BNSS). Magistrate has several distinct options upon submission of police report and those options are summarized below:-

### **"1. Accept the Report and Take Cognizance**

If the report (charge sheet) indicates that an offence has been committed, the Magistrate may:

- Take Cognizance: Act upon the facts disclosed in the report and issue a process (summons or warrant) to the accused.
- Independent Review: The Magistrate is not legally bound by the police report. Even if the police submits Final Report because of "insufficient evidence", the Magistrate may still take cognizance if he finds that the records actually disclose a prima facie offence.

### **2. Reject the Report (Closure or Final Report)**

A. If the police submits a "closure report" (Final Report) stating no offence was found, the Magistrate can:

- Accept and Drop Proceedings: Agree with the police and discharge the accused.
- Mandatory Notice: Before accepting a closure report, the Magistrate must notify the informant or victim, giving him an opportunity to be heard through a "protest petition".

B. Order Further Investigation

If the Magistrate finds the investigation was incomplete or flawed:





- Direct Further Investigation: Order the police to gather more evidence under the powers now found in Section 175(3) (formerly 156(3) Cr. P.C. or Section 193(9) BNSS (formerly 173(8) Cr. P.C.

#### C. Convert Protest Petition into complaint

If the victim or informant files a protest petition challenging the police report (Closure Report), the Magistrate can:

- Treat as a Complaint: Magistrate can treat the protest petition as a private complaint under Section 223 of the BNSS (formerly Section 200 Cr.P.C.) and then proceed further in accordance with the procedure laid down under Chapter 15 of Cr. P.C.
- Dismiss the Petition: If no *prima facie* case is made out even after hearing the complainant, the Magistrate may dismiss the petition and accept the original police report.”

17. Hence, it is abundantly clear that whenever a Final Report (FR) Negative is submitted by the police in the Court, the Magistrate has to issue notice to the complainant informant. After receipt of the notice if the complainant appears and does not file a protest petition, then the Magistrate can hear the arguments of both sides and he would either accept the FR if no case is found to be made out or reject the FR and take cognizance against the accused if *prima facie* any case is made out against him.

18. But if protest petition is submitted by the complainant and evidence is produced in this regard, then after considering the FR along with the protest petition and the evidence of the witnesses, the Court has three options, either to accept FR or reject the FR and take cognizance against the accused or send the matter for further investigation.





19. At this stage, the Court is not supposed to pass two different orders i.e., accept or reject the FR and then proceed with the protest petition, record the evidence, if any led by the complainant/victim and then either reject or accept the protest petition and take cognizance. At this stage two different orders are not supposed to be passed. If one order is passed on FR then the Court of Magistrate becomes "functus officio" then it cannot pass second order on the protest petition. A common order is required to be passed at this stage.

20. It has also been held by the Supreme Court in the case of **Abhinandan Jha and Others vs. Dinesh Mishra** reported in **1967 SCC OnLine SC 107** in para 15, which reads as under:

"15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report'? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take





cognizance of the offence under Section 190(1) (b), notwithstanding the contrary opinion of the police, expressed in the final report.”

21. Similar view has been taken by the Apex Court in the case of **Bhagwant Singh vs. Commissioner of Police and Another** reported in **(1985) 2 SCC 537** and it has been held in para 4 as under:

“4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken





by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of





consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under subsection (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

22. Hence, under these circumstances, the learned Revisional Court has erred in making observations in para 35 and 37 of his judgment whereby it is stated that the learned Magistrate should have passed two separate orders. The aforesaid observations made by the Revisional Court is foreign to the procedure contained under Chapter XIV Cr.P.C. Therefore, under these circumstances, the impugned order passed by the Revisional Court is not legally sustainable in the eyes of law and is liable to be quashed and set-aside.

23. The matter is remitted to the Revisional Court for passing fresh orders on the merits of the matter, after hearing the arguments of both the sides once again.

24. The parties are directed to appear before the Revisional Court on 11.05.2026.





25. It is expected from the Revisional Court to decide the revision petition expeditiously as early as possible, preferably within a period of three months from the date of receipt of certified copy of this order.

26. With the aforesaid observations/directions, the instant criminal misc. petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.



(ANOOP KUMAR DHAND),J

KuD/18