Serial No. 2

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 200/2012
IA No. 226/2012

Mohd. Zafer .....Appellant(s)/Petitioner(s)

Through: Mr. Ch. Mohd. Shabir, Advocate

vs

State of J&K and ors. ..... Respondent(s)

Through: Ms. Tejasvini Anand, Advocate vice
Mr. Bhanu Jasrotia, GA for R-1 to 6
Mr. Waheed Choudhary, Advocate for R-7

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)
19.11.2026

1. The petitioner, who has been proceeded under section 512 Cr.P.C, is seeking quashing of the charge sheet No. 18/2012 dated 20.03.2012 filed before the court of learned Munsiff, Kotranka, Budhal, District Rajouri for commission of offence under Section 376 RPC, arising out of FIR No. 93/2009 dated 22.10.2009.

2. The petitioner's case in the present petition is that he and respondent No. 7 reside in the same village and have been embroiled in a land dispute for many years. Acting with *mala fide* intent to wreak vengeance and coerce the petitioner into settling the dispute, respondent No. 7 filed an application under Section 156(3) Cr.P.C. on 22.10.2009 before the court of learned Chief Judicial Magistrate, Rajouri for issuance of direction to SHO, Police Station, Kandi, District Rajouri to register the FIR against the petitioner. Respondent No. 7 alleged that on 21.10.2009, when she had gone to cut

grass on her land, the petitioner appeared there and committed the offence of rape upon her.

3. Pursuant to the directions issued by learned CJM, Rajouri, FIR No. 93/2009 dated 23.10.2009 under Section 376/354 RPC was registered.

4. It is urged by the petitioner that thereafter, respondent No. 7 executed an affidavit before the Executive Magistrate 1st Class Kotranka, wherein she narrated the true incident and stated that on 21.10.2009, when the petitioner was cutting the grass from the land of respondent No. 7, she tried to stop him from doing so. There was an altercation between them, whereupon she conceived the idea of implicating the petitioner in a grave offence, and that was the reason for lodging a false and frivolous FIR against him. It is further contended that based upon the affidavit and medical report of respondent No. 7, the Police authorities concluded the investigation in the FIR as "Not Proved" and in this regard, Ikhtami (closure report) was filed before the competent court, which was duly accepted. It is further stated that thereafter, a compromise also took place between the families of the petitioner and respondent No. 7 with the intervention of the village elders, and the marriage between the petitioner and respondent No. 7 was solemnized in accordance with Shariat law However, respondent No. 7 did not mend her ways even after marriage, and actuated by malice to spoil the relationship between herself and the petitioner, she filed a petition under Section 488 Cr.P.C. before the Court of JMIC, Rajouri, which was finally disposed of on 30.12.2011. Not satisfied with the disposal of petition, respondent No. 7 approached the official respondents for re-opening of the investigation and respondent No. 5 directed re-opening of the investigation

even when the Ikhtami in FIR No. 93/2009 was accepted on 17.06.2010 and filed before the competent court.

5. By placing these facts before this Court, the petitioner in fact seeking quashing of the charge sheet.

6. Status report stands filed, wherein the factual aspects of the case as recorded above have been narrated. It is further stated that during course of investigation, the complainant and her brother produced the affidavits duly attested by JMIC Kotranka and as per medical report, the Investigating Officer closed the case as not admitted vide Final report No. 08/2010 dated 17.06.2010. Thereafter, vide DPO Rajouri order dated 10.03.2011, the case was re-opened, and the investigation was carried out. The statement of the complainant was recorded under Section 164-A Cr.P.C. and it was established that the petitioner had committed the offence under Section 376 RPC.

7. Respondent No. 7 has also filed objections. Besides narrating the factual aspects, it is stated that the charge sheet was presented before the court of learned JMIC, Kotranka on 20.03.2010 and the petitioner was proceeded under section 512 Cr.P.C. as he had absconded. It is also averred that the petitioner, merely to save himself from the law, once again perpetrated a fraud upon her and solemnized a marriage, and after some time divorced her.

8. Learned counsel for the petitioner has submitted that as respondent No. 7 had sworn the affidavit, as such, investigation in the FIR reportedly was closed as not admitted, more particularly, when the medical evidence did not support the allegations of respondent No. 7. He has further submitted

that the Police had no authority to re-open the investigation, once the closure report was filed. In support of his contentions, he has relied upon the judgment of the Supreme Court of India in case titled, '**Pramod Kumar & Ors.' vs. State of U.P. & Ors.' reported in 2026 INSC 120**.

9. Ms. Tejasvini Anand, learned counsel for the official respondents has submitted that in the status report, it is categorically stated that though closure report was prepared but pursuant to the directions issued by the supervisory officer, the case was re-opened and this fact is duly recorded in the charge sheet as well.

10. Mr. Waheed Choudhary, learned counsel for respondent No. 7 has submitted that entering into compromise by the petitioner with respondent No. 7 was in fact the ploy to scuttle the investigation so as to wriggle out the consequences of the commission of serious offence of rape and in fact, was an act of fraud because after solemnizing marriage with respondent No. 7, he divorced her after some time.

11. Heard learned counsel for the parties and perused the record.

12. The first contention advanced on behalf of the petitioner is that once respondent No. 7 had sworn an affidavit admitting the falsity of the FIR lodged at her instance, moreover, when the medical report failed to substantiate her allegations and the investigation stood closed, the matter ought not to have been reopened.

13. A perusal of the charge sheet as well the response filed by respondent No. 1 reveals that the case was closed as not admitted by the Investigating Officer pursuant to the affidavit sworn by respondent No. 7 and on the basis of negative medical report. Thereafter, vide DPO Rajouri Order No. 194/2011

dated 10.03.2011, the case was re-opened, and the investigation was carried out by Sh. Mohd Arif Choudhary the then SHO P/S Kandi and finally the investigation was entrusted to SI Mohd Iqbal.

14. It is not the case where after the investigation of the case was closed as not admitted by the Investigating Officer and the Final report in terms of Section 173 Cr.P.C. was filed before the court and was accepted, rather it appears that the higher authorities did not accept the final report and rather directed the continuance of the investigation. The petitioner has not produced any documentary evidence on record that the closure report was submitted and accepted by the concerned court. The judgment relied upon by the learned counsel for the petitioner in case titled, 'Pramod Kumar & Ors.' vs. State of U.P. & Ors.' 2026 INSC 120 is not applicable in the present facts and circumstances of the case as in the said case, the Hon'ble Supreme Court of India was confronted with the situation, as to whether after submitting the final report under Section 173(2) Cr.P.C, the Police/Investigating Agency can conduct further investigation under Section 173(8) Cr.P.C. without obtaining leave of the Magistrate/court concerned. This is not the situation in the present case, as such, once the statement of the victim under Section 164-A Cr.P.C. has been recorded, this Court cannot quash the charge sheet on the basis of the affidavit sworn during investigation by the complainant.

15. The charge sheet can also not be quashed solely on the ground that the medical report does not support the prosecution case. (**See para- 6.2 of the judgment of the Hon'ble Apex Court in Deepak Kumar Vs. State of Chattisgarh", 2025 INSC 929**).

16. In view of the above, the present petition is found to be without merit. The same is **dismissed**.

17. Interim direction, if any, shall stand vacated.

(RAJNESH OSWAL)
JUDGE

Jammu
19.11.2026
Neha-II

Whether the order is speaking: Yes
Whether the order is reportable: No

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

NEHA KUMARI
2026.11.20 16:50
I attest to the accuracy and
integrity of this document