



**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 22.04.2025

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**CRM(M) No. 507/2022
CrIM No. 1434/2022**

**Sunny Kashyap, Age 32 years
S/o Sh. Karam Chand
R/o H. No. 10 Kot (Purkhoo)
Tehsil & District Jammu.**

.....Petitioner

Through: Mr. Pranav Sharma, Advocate &
Mr. M. Asif Mir, Advocate

Vs

**Union Territory of Jammu & Kashmir
Through SHO Police Station Achabal, Anantnag.**

.....Respondent

Through: Mr. Iliyas Nazir Laway, GA.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

01. Through the medium of this petition, the institution of which is sourced to section 482 of the Code of Criminal Procedure, 1973, the petitioner has come forward seeking this Court to exercise its inherent power to relieve the petitioner from the grip and grasp of an ongoing criminal case which is alleged to be nothing but fractured facts stitched case set up against the petitioner having no legal bearing and justifiability to subject the petitioner to suffer the ordeal if left to run its trial course.



02. The hard core facts of the case presented in the petition go like this that one Abdul Majeed Shah S/o Abdul Gani Shah, a retired Govt. employee and resident of Badoosa, by a handwritten undated complaint, had reported himself before the SHO Police Station, Achabal on **17.09.2015** at about **14:30 hours** seeking thereby lodging of an FIR by stating therein that on **14.09.2015** his daughter, whose name this Court is consciously screening by referring her as Miss X aged about 16-17 years went to market but did not return home whereupon he along with his family members searched for her from relatives/friends but could not trace her only to come to know that she has been forcibly kidnapped by a person, namely, Sunny Kashyap S/o Karam Chand R/o 10-Kot Purkhoo, tehsil & district Jammu for sexual intercourse and had hidden her to some unknown place. Said written complaint by Abdul Majeed Shah resulted in registration of an **FIR No. 93/2015** dated **17.09.2015** for alleged commission of offence under section 363 Ranbir Penal Code providing punishment for kidnapping.

03. By reference to lodging of aforesaid FIR, it is pertinent to mention here that the person – Sunny Kashyap named as an accused by the complainant – Abdul Majeed Shah in his said written complaint, is none else than the petitioner in the present petition.



04. Purportedly acting on the basis of said FIR, the Investigating Officer (I.O.) – SI Ghulam Qadir of the Police Station Achabal is said to have recovered the victim-Miss X, the daughter of FIR maker Abdul Majeed Shah, from the possession of the petitioner as being an accused named in said FIR. The fact of recovery of victim Miss X is forthcoming from an undated signed application made by SHO Police Station Achabal to the Medical Officer, Public Health Centre (PHC), Achabal in terms whereof medical examination of victim-Miss X, daughter of the FIR maker Abdul Majeed Shah, was solicited.

05. For very strange reasons, despite having recovered the victim-Miss X from the possession of the petitioner, the I.O. concerned, for the reasons un-gatherable from the record, did not carry out the arrest of the petitioner despite the fact that the petitioner was accused of commission of an offence under section 363 Ranbir Penal Code which being a cognizable offence.

06. The victim-Miss X was medically examined on **18.09.2015** and her age which came to be disclosed and mentioned in the medical examination certificate was then 20 years. Medical examination report further ruled out any recent act of sexual intercourse committed upon the victim-Miss X.

07. The victim-Miss X's statement under section 164-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989



(1933 A.D.) came to be recorded before the Judicial Magistrate, Ist Class, Shangus on **22.09.2015** by reference to FIR No. 93/2015 with mention of offences now under sections 363/376/343 Ranbir Penal Code.

08. The victim-Miss X in her said statement also referred and recorded her age to be 20 years as against reference of her age 16-17 years made by her father Abdul Majeed Shah in his written complaint translated into said FIR No. 93/2015.

09. This incorrect mention of age in FIR related to victim-Miss X has a direct relevance attending the mindset with which registration of FIR had taken place at the instance of father Abdul Majeed Shah about the effect of which this Court would be adverting herein later in the light of the submission made by the learned counsel for the petitioner in assailing the built up of criminal case against him.

10. Finding himself caught in a criminal accusation, the petitioner had rushed to petition this Court by filing a petition **491-A No.01/2015** on **23.09.2015** invoking section 491 of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) seeking a direction in the nature of habeas corpus for production of victim-Miss X.

11. In his said petition, the petitioner came to narrate that victim-Miss X was major who was in courtship with him on the basis whereof two had resolved to marry each other



notwithstanding belonging to different religion and in that regard, it stood pleaded the marriage between the petitioner and the victim Miss X had come to take place on **16.09.2015** at Jammu in Arya Samaj Mandir, Janipur Colony, Jammu duly documented vide marriage **certificate No. 000906** dated **16.09.2015** issued by the Manager of the said Mandir bearing then recent passport size photographs of victim-Miss X as well as of the petitioner entering into marital tie and that she had been taken away on **18.09.2015** from his marital custody to be handed back to her father-Abdul Majeed Shah by a police team from a Police Station Achabal which had visited the residential house of the petitioner in Jammu.

12. The petitioner had reckoned the removal of victim-Miss X, whom he reckoned and referred to be his wife, as illegal and, therefore, solicited production of her person through the indulgence of this Court by petitioning for the said purpose.

13. In response to said petition **491-A No. 01/2015**, this Court came to direct production of victim-Miss X upon whose personal appearance accompanied by her mother, she was examined to enquire as to with whom she wanted to go and stay with whereupon victim-Miss X had stated that she was not suffering any wrongful confinement at the hands of her parents but simultaneously admitting that she had solemnized marriage with the petitioner but now she wanted to go back



and live with her parents. Said statement of victim-Miss X came to be taken on record. In view of fact that victim Miss X was being let to go with her parents in exercise of her free volition and discretion resulted in disposal of said petition 491-A No. 01/2015 in terms of an order dated **27.10.2015**.

14. Statement of victim Miss X by reference to the proceedings of petition **491-A No. 01/2015** was also taken in which she had very categorically stated that she had married the petitioner.

15. Contrary to the facts so obtaining, SHO Police Station Achabal after a gap of more than six years still came forward with production of a **Final Police Report (Challan) No.38 of 2022** dated **25.07.2022** with respect to **FIR No.93/2015** seeking criminal prosecution of the petitioner for alleged commission of offences under sections 366/376/343 Ranbir Penal Code by showing the petitioner as an absconder against whom proceedings under section 512 of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) were set into effect.

16. The production of **Final Police Report (Challan) No. 38 of 2022** was in absence of the accused as if the I.O. of FIR No. 93/2015 all along remained clueless with respect to whereabouts of the petitioner whereas the very procurement of victim-Miss X is said to have taken place from the possession of the petitioner way back in **September, 2015**.



17. The production of **Final Police Report (Challan) No. 38 of 2022** was a ritual process of compilation and presentation of papers bearing purported statements under section 161 of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) as well as statement of victim-Miss X under section 164-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) and other miscellaneous documents but strangely the entire Final Police Report (Challan) No. 38 of 2022 did not bear any reference to the fact of filing of petition 491-A of 01/2015 by the petitioner before this Court in which the statement of victim-Miss X had come to be recorded stating therein that though she had married the petitioner on her own volition but she wanted herself back into the folds of her parents without bearing any whisper of accusation of being subject to any abduction, wrongful confinement and sexual violence committed upon her person.

18. The Final Police Report (Challan) No. 38 of 2022 came to be presented through the Chief Judicial Magistrate, Anantnag before the Sessions Judge, Anantnag on **01.09.2022** whereupon it came to be transferred to the Court of Additional Sessions Judge, Anantnag to be taken on its **file No. 154/2022** on **25.07.2022**.

19. Finding himself being dragged into whirlpool of criminal accusation and persecution in the name of criminal



prosecution so launched through said criminal case, the petitioner came forward with institution of the present petition before this Court on **23.11.2022**.

20. In response to the petition so filed, this Court, by virtue of an order dated **24.11.2022**, came to grant indulgence by staying the proceedings of the criminal case pending before the court of Additional Sessions Judge, Anantnag on file No. 154/2022 and also solicited response from the respondent to the present petition which came to be submitted on **30.10.2024** through SHO Police Station Achabal.

21. In this petition, the petitioner has assailed the entire genesis giving shape to the criminal case against him right from registration of **FIR No. 93/2015** by the Police Station Achabal through the production of **Final Police Report (Challan) No. 38 of 2022** and launching of criminal prosecution on **file No. 154/2022** before the court of Additional Sessions Judge, Anantnag for alleged commission of offences under section **366/376/343 of the Ranbir Penal Code**.

22. The petitioner, in para 3 of his petition, comes forth with grounds of challenge to the aforesaid legal situation.

23. The petition is accompanied with record related to filing of 491-A No. 01/2015 petition before this Court, order dated **27.10.2015** passed therein and the statement of victim-



Miss X recorded on **27.10.2015**. In addition, the petitioner has also annexed the document of marriage issued by Arya Samaj Mandir, Janipur Colony, Jammu.

24. Mr. Pranav Sharma, learned arguing counsel for the petitioner submits that very registration of FIR at first instance and then the filing of Final Police Report (Challan) No. 38 of 2022 against him by the Police Station Achabal is nothing but a malafide exercise of investigative power by the I.O. and SHO Police Station Achabal both of whom have acted with a dismissive attitude towards the crucial connecting factual aspects of the case related to institution of petition 491-A No. 01/2015 by the petitioner before this court which resulted in outcome in terms of an order dated **27.10.2015** based upon statement of none else than the victim-Miss X.

25. On the other hand, in response to the present petition, SHO Police Station Achabal has come forward parroting the same script which is texted in the Final Police Report (Challan) No. 38 of 2022.

26. Interestingly, there is a complete avoidance in Final Police Report (Challan) to the aspect of the case scenario related to filing of petition 491-A No. 01/2015 by the petitioner before this Court in which the statement of victim-Miss X came to disclose the truth as to the fact that she had admitted her marriage with the petitioner but, nevertheless, wanted herself back to be in the company of her parents thereby



ruling out any act of omission or commission amounting to an offence on the part of the petitioner towards person of victim-Miss X.

27. When this Court examines the facts stated in the present petition and the mindset with which the I.O. of FIR No. 93/2015 as well as of SHO Police Station Achabal coming up with Final Police Report (Challan) No. 38 of 2022, this Court is left pondering as to why instead of being progressive and open minded in its investigation, the police investigation more often is found to be regressive and stereotyped when very elementary and essential facts which are there to be seen and noticed by an I.O. concerned in connection with the investigation of a given criminal case are given an ignorance and slip with impunity as if by omitting to mention and document said obvious facts the final investigation report will make said facts go in perpetual hiding and fading not to be cited and reported by anyone at any point of time to impinge and impugn given police investigation and the case built and presented thereupon.

28. In this regard, this Court is tempted to highlight the said facts which were so obvious that the same could not have avoided an open minded and attentive investigator conducting investigation with respect to FIR No. 93/2015.

29. Firstly in his written complaint, the complainant-Abdul Majeed Shah came forward misquoting the age of his



missing daughter. A father whose daughter had gone missing would not be suffering loss of memory with respect to mention of her correct date of birth and age of his missing daughter, which at the relevant point of time was never 16-17 years as even his daughter victim- Miss X in her own statement first made under section 164-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) before the Judicial Magistrate, Ist Class, Shangus on **22.09.2015** referred to be 20 years i.e. within six days of registration of **FIR No. 93/2015** dated **17.09.2015**.

30. This wrong mention of age of his missing daughter-Miss X by the complainant-Abdul Majeed Shah lodging the FIR obviously was with a mindset to suppress the true facts and sensationalize the case as if a minor girl had become the victim of kidnapping with possibility of being subjected to more heinous offence upon her person that too by a person of different religious background. I.O. concerned in the case did not confront the complainant Abdul Majeed Shah, the father of victim-Miss X as to why he had misquoted the age of his daughter victim-Miss X in his complaint mentioning her to be 16-17 years as against her actual date of birth being **10.04.1996** in her class 10th mark-sheet which came to be procured by I.O. for the purpose of production along with Final Police Report (Challan) and the same is on the record.



31. In his complaint made on **17.09.2015** before the Police Station Achabal, resulting in registration of FIR No. 93/2015, the complainant – Abdul Majeed Shah did not divulge and even the I.O. did not bother to enquire and fetch from him as to wherefrom the complainant had come to gather information as to the fact that the petitioner had taken away his daughter – victim Miss X and also wherefrom the complainant – Abdul Majeed Shah had come to procure the readymade information with respect to the whereabouts of the petitioner in terms of his full name, parentage and residential address reference to be so stated in the very complaint resulting in registration of FIR No. 93/2015.

32. Thus, very obviously from the very inception something more than what came to be stated in the written complaint was at workfully known to Abdul Majeed Shah, the father of victim-Miss X, but still that essential aspect was kept withheld to be brought on record with an objective to get the FIR registered instead of a missing report being first taken on record which in normal course would have been the legal course of action.

33. Thus, the registration of FIR No. 93/2015 at the instance of the complainant – Abdul Majeed Shah by Police Station Achabal was a scripted one from the very inception.

34. SHO Police Station Achabal is on record to say in his written application addressed to the Medical Officer, Achabal



that victim-Miss X was recovered from the possession of the petitioner being referred as an accused in his very said application upon which victim-Miss X was subjected to medical examination on **18.09.2015** itself meaning thereby that on very next day of registration of FIR on **17.09.2015** victim-Miss X had been recovered from the petitioner without disclosing on whose lead, from which place and under what circumstances by the Police Station Achabal.

35. Be that as it may, despite having recovered the victim-Miss X from the possession of the petitioner being referred as an accused, the arrest of the petitioner was missed out to be carried out for the reasons again best known to the I.O. concerned but not disclosed in the Final Police Report.

36. On whose identification the recovery of victim-Miss X from the possession of the petitioner as an accused was carried out by the Police Team of Police Station Achabal is nowhere to be found on the record of the Final Police Report (Challan) No. 38 of 2022 which is a pointer to the fact that in the name of investigation presented as a Police Report (Challan) more was kept suppressed rather than divulged and disclosed before the criminal court as if a criminal court is supposed to act on a blinkered mode of reading and understanding by dispensing with its judicial and forensic understanding which otherwise is an essence of a judicial



mind irrespective of the hierarchy at which the same is functioning.

37. After recording of her statement under section 164-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) taking place on **22.09.2015**, the victim-Miss X's next statement had come to take place on **27.10.2015** before this Court in connection with petition 491-A No. 01/2015 i.e. within a period of one month.

38. The finalization of Police Report (Challan) No. 38 of 2022 came to take place on **25.07.2022** but the I.O. of the said FIR No. 93/2015 as well as SHO Police Station Achabal did not get the time to refer themselves to the records of this Court related to petition 491-A No. 01/2015 to reconcile the statement of victim-Miss X so recorded on **27.10.2015** to the alleged projection of a case of commission of offences under sections 366/376/343 of Ranbir Penal Code is a serious commentary on the mindset of investigation being done as if it is for an I.O. to be fact chooser in his own discretion in connection with investigation of a case.

39. The victim-Miss X was produced before this Court in the proceedings of petition 491-A No. 01/2015 by none else than I.O. Ghulam Qadir of Police Station Achabal himself and, therefore, it cannot lie at the end of Police Station Achabal to plead ignorance of said aspect of the case to be missed out in full mention in the impugned Police Report (Challan).



40. Thus, on all essential factual aspects of the case, this Court finds that investigation of FIR No. 93/2015 resulting in presentation of a Final Police Report (Challan) No. 38 of 2022 was with a mindset to torment the petitioner of having dared to indulge in an inter-religion marriage for which this Court has no hesitation in saying and observing so in bold letters bearing full consciousness about the state of facts of the case.

41. If this Court allows the criminal case so presented and pending before the court of Additional Sessions Judge, Anantnag to run its course, then it would be nothing but a sheer persecution of the petitioner at the cost of high ends of justice.

42. It is in such like cases that inherent power of this Court so reserved under section 482 of the Code of Criminal Procedure, 1973 (akin to 561-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) is meant to be activated and operative.

43. In fact, this Court is of the view that it is always meant and expected from a criminal court to be proactive rather than being passive from the very presentation of final police report(challan) onwards in scanning the script of the criminal case to figure out by exercise of judicial acumen as to whether the case presented for subjecting an accused to undergo and stand trial for alleged offence/s, has all the factual frames fully probed and presented to sustain framing



of charge against an accused or the case presented is a factually fractured and cavitated one just for the sake of booking of an accused with an inevitable fate coded from the very inception that accused is meant to be persecuted rather than prosecuted before the given criminal court of law.

44. Presentation and entertainment of such like criminal case/s is one of the underlying causes of snail pace of criminal administration of justice taking place in criminal court/s, as such like cases tax the load-ridden docket system of criminal court/s taking its own time to make a final exit unless and until an aggrieved person subjected to suffer misconceived prosecution is able to somehow reach for inherent power of this Court to be exercised, or a given criminal court self activates its sharp judicial scrutiny of case and give it its deserving fate of rejection at the very charge framing stage without wasting any adjournment for such like case.

45. Learned counsel for the petitioner has drawn reliance from the judgments of the Hon'ble Supreme Court of India in the cases of **Kim Wansoo Vs State of UP, 2025 SCC Online SC 17, Kapil Agarwal & ors. Vs Sanjay Sharma and ors., (2021)5 SCC 524 & Seema Mishra Vs State of UP, (2025)2 SCR 534.**

46. The aforesaid citations serve the perspective and point in reference and the conclusion which this Court has arrived at in allowing the present petition.



47. The petition is, thus, ***disposed of*** by ordering quashment of criminal case **file No. 154/2022** before the court of Additional Sessions Judge, Anantnag read with **Final Police Report (Challan) No.38 of 2022** dated **25.07.2022** and **FIR No. 93/2015** dated **17.09.2015**, all of which are quashed.

48. ***Disposed of.***

49. Copy of this order be provided to Additional Sessions Judge, Anantnag for being taken on record to give disposal to the aforementioned file accordingly.

(Rahul Bharti)
Judge

Srinagar
15.12.2025
Muneesh

Whether the judgment is speaking : **Yes**
Whether the judgment is reportable : **Yes**