

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Ref(Crl)No.01/2022

State through P/S Vok

...Petitioner(s)

Through: None.

V/s

Dr. Fayaz Ahmad Banday & others

...Respondent(s)

Through: None.

CORAM:

**HON'BLE MR. JUSTICE SANJAY DHAR,
JUDGE**

(ORDER)

15.04.2022

- 1) The instant reference has been made by learned Special Judge, Anticorruption, Kashmir Srinagar, in terms of Section 341 of the Jammu and Kashmir Code of Civil Procedure, which corresponds to Section 318 of the Code of Criminal Procedure, 1973. In the order of reference, the learned Special Judge has observed that one of the accused, namely, Ghulam Rasool Joo, who is facing trial before the learned Special Judge for offences under Section 5(1)(c)(d), 5(2) of Prevention of Corruption Act read with Section 120-B, 467, 468, 409 RPC, has

been found to be suffering from Vascular Dementia and that he is not in a position to understand the legal proceedings. It has been further observed that as per the opinion rendered by the Medical Board, the said accused is not fit to stand the trial

2) On the aforesaid ground, the learned Special Judge, taking resort to the provisions contained in Section 341 of J&K Cr. P. C, has made a reference to this Court for passing appropriate orders in the matter.

3) Before determining the merits of this reference, it is necessary to have a look at the provisions contained in Section 341 of J&K Cr. P. C. It reads as under:

“341. Procedure where accused does not understand proceedings.—If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial, and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.”

4) From a bare perusal of the aforesaid provision, it is clear that if the accused, though not insane, cannot be made to understand the proceedings, the Court can proceed with the inquiry or trial and if such inquiry results in a commitment or

results in conviction, the proceedings have to be forwarded to the High Court with report of the circumstances of the case.

5) Adverting to the facts of the instant case, admittedly, the proceedings before the learned Special Judge are not in the nature of committal proceedings. What is pending before the learned Special Judge is the trial of the case as charges have already been framed against the accused including Shri Ghulam Rasool Joo who is stated to be not fit to stand the trial. A perusal of the order of reference passed by the learned Special Judge reveals that the trial of the case is still going on and it has not been concluded, which means that it has not resulted in conviction of the aforementioned accused as yet. It is only in case the trial of an accused, though not insane, who cannot be made to understand the proceedings, results in conviction that a reference is required to be made to the High Court. The reference made by the learned Special Judge is, therefore, premature and cannot be accepted.

6) For the foregoing reasons, the reference is declined and the learned Special Judge is directed to proceed in accordance with the provisions of Section 341 of J&K Cr. P. C or in

accordance with the provisions contained in Chapter XXXIV of the J&K Cr. P. C which relates to lunatics, as the case may be.

7) A copy of this order be sent to the learned Special Judge for information and compliance.

(SANJAY DHAR)
JUDGE

Srinagar

15.04.2022

“Bhat Altaf, PS”

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No

