

Serial No. 12
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 324/2023 CrIM(790/2023)

Parveena Banoo.

...Petitioner(s)

Through: Mr. Hasnain Khawja, Advocate.

VERSUS

Mohammad Iqbal Qureshi and Anr.

Through: Ms. Nadiya Abdullah, AC.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER

02.07.2025

1. The petitioner/complainant has challenged order dated 29-04-2023 passed by learned Special Mobile Magistrate (Railway Magistrate), Srinagar, whereby the application of prosecution/respondent No. 2 under Section 540 J&K CrPC has been dismissed.
2. Heard and considered.
3. It appears that a challan arising out of FIR No. 6/2006 for offences under Section 420, 468 and 471 of RPC registered with police Station Crime Branch Srinagar, is pending before the learned Trial Magistrate since the year 2014. It also appears that the prosecution could not produce all its witnesses before the learned Trial Court with reasonable dispatch which resulted in closure of its evidence in terms of order dated 13-10-2015 passed by the learned Trial Court.
4. The record shows that the prosecution moved an application under Section 540 of J&K Cr.PC before the learned Trial Court which

came to be dismissed by the court on 18-12-2015. Against the said order the petitioner/complainant filed a petition before this court which was allowed by this court in terms of order dated 20-03-2019, and the prosecution was directed to produce all the left-over witnesses within four dates. It seems even after the aforesaid direction of this court the prosecution could not produce all the left-over witnesses and two witnesses PW12- Shri Altaf Ahmad, Scientific Officer FSL Srinagar, and PW13-Mohd Saleem Sub Inspector police station Crime Branch could not be examined. The learned Trial Court vide order dated 27-02-2020, closed the prosecution evidence and the matter was set down for recording the statement of the accused under Section 342 J&K CrPC. After closure of defence evidence the matter was set down for final hearing. It is at this stage that another application was made by prosecution under Section 540 CrPC before the learned Trial Court seeking permission to examine PW12-Shri Altaf Ahmad, Scientific Officer FSL Srinagar and PW13-Mohd Saleem Sub Inspector. The said application came to be dismissed by the learned Trial Court in terms of the impugned order primarily on the ground that prosecution has not been diligent in producing its witnesses and that they have failed to produce the witnesses despite availing a large number of opportunities.

5. It has been contended by learned counsel for the petitioner/complainant that after the passing of order dated 20-03-

2019, by this court in earlier round of litigation whereby the prosecution was permitted to produce its witnesses on four dates of hearing, the situation in the erstwhile state of J&K became abnormal on account of abrogation of Article 370 of the Constitution of India and thereafter the Covid-19 pandemic intervened which prevented the prosecution from producing the aforesaid two witnesses before the learned Trial Court. It has been submitted that this aspect of the matter has not been taken into consideration by the learned Trial Court while rejecting the application of the prosecution. He has further contended that non-examination of important witnesses like investigating officer and the expert of FSL is going to cause miscarriage of justice and therefore it would be in the interests of justice that at least one opportunity is granted to prosecution to produce the aforesaid two witnesses.

6. Section 540 of the J&K CrPC vests power with a criminal court to summon any person as a witness or examine any person in attendance or recall and re-examine any person already examined if his evidence appears to the court essential to the justice decision of the case. The said power can be exercised by a criminal court at any stage of inquiry, trial or other proceedings under the Code. Therefore, merely because the case had been set down for final arguments by the learned Trial Court could not have become a

ground to decline the application of the prosecution for summoning of the witnesses.

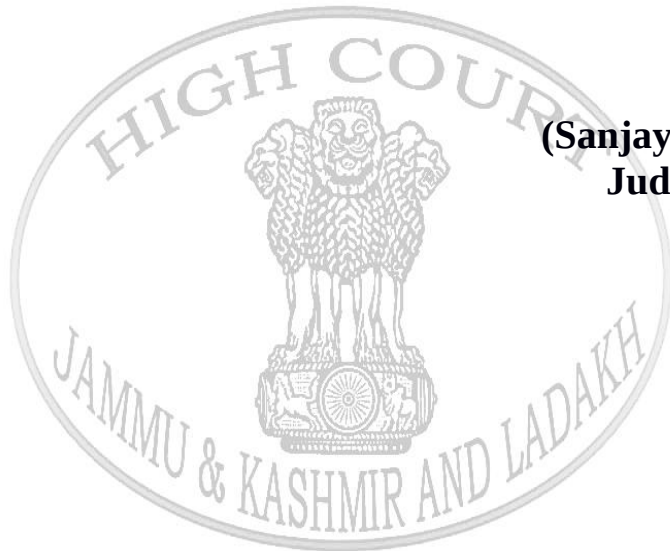
7. It is true that in the present case the approach of the prosecution appears to be lethargic inasmuch as it has failed to produce the witnesses before the trial court with reasonable dispatch. The prosecution has even squandered the opportunity that was granted by this court to it in the earlier round of litigation. However, it is also a fact that working of the courts post abrogation of Article 370 of the Constitution of India and thereafter due to intervention of the Covid-19 pandemic, had remained severely hampered and the witnesses were reluctant to appear before the courts during that period. The learned Trial Court has not taken these circumstances into account while closing the evidence of the prosecution.
8. Yet another aspect of the matter which has not been adverted to the learned Trial Court is that PW12 is a Government Official and it was incumbent upon the learned Trial Court to issue summons for seeking his attendance before the court. Without making any effort to summon the said witness, the learned Trial Court could not have closed the evidence.
9. For the foregoing reasons the application is allowed and the impugned order dated 29-04-2023 is set aside. Respondent No. 2/investigating agency is directed to produce PW13-Sub-inspector Mohd Saleem on the date of hearing fixed before the learned Trial court for his examination on its own responsibility. Regarding

PW12-Altah Ahmad Scientific Officer, learned Trial Court shall issue summons which shall be handed over to the investigating agency for its service upon the said witness. The process of recording statements of the aforesaid two witnesses shall be completed by the learned trial court within one month from the date of receipt of this order.

10. A copy of this order be made available to the learned Trial Magistrate.

11. Disposed of as above.

SRINAGAR
02.07.2025
Sarvar



(Sanjay Dhar)
Judge