



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**CRMC No.58/2019**  
CrlM No.209/2019[1/2019]

**Reserved on: 01.04.2026**  
**Pronounced on: 10.04.2026**  
**Uploaded on:- 16.04.2026.**

*Whether the operative part or  
full judgment is pronounced: Yes*

**Bishnesh Kumar**  
S/O Sh. Behari Lal,  
R/O H. No. 183, Sector-1,  
Sanjay Nagar, Jammu

.....Petitioner

Through :- Mr. Zulkernain Choudhary, Adv.

**V/S**

- 1. Rajat Jandial,**  
S/O Sh. Ravinder Gupta  
R/O H. No. 43, Lane NO.7,  
Greater Kailash, Jammu.
- 2. J. P. Sharma, Sub-Inspector,**  
posted at Central Pool Security,  
DPL, Jammu.
- 3. Abdul Jabbar (IPS),**  
On Central Deputation  
C/O Police Headquarters,  
Gulshan Ground,  
Gadhi Nagar, Jammu
- 4. Mohan Lal Kaith**  
Superintendent of Police,  
Armed PCR, Parade, Jammu.
- 5. Rajeshwar Singh,**  
AIG Personnel, PHQ, Jammu.

.....Respondent(s)

Through :- Ms. Tehseena Bukhari, Adv. &  
Mr. Anil Kumar, Adv vice  
Mr. A. K. Sawhney, Sr. Adv.  
Mr J. P. Gandhi, Advocate.



**CRM(M) No.344/2019**  
CrIM No. 824/2019

**Abdul Jabbar, IPS**  
C/O ZPHQ Jammu  
Joint Deputy Director,  
Ministry of Home Affairs,  
New Delhi.

.....Petitioner

Through :- Mr. J P Gandhi, Adv.

**V/S**

- 1. Rajat Jandial,**  
S/O Sh. Ravinder Gupta  
R/O H. No. 43, Lane No.7,  
Greater Kailash, Jammu.
- 2. Bishnesh Kumar, SHO**  
Police Station, Gandhi Nagar, Jammu.
- 3. J. P. Sharma, Sub-Inspector,**  
posted at Central Pool Security,  
DPL, Jammu.
- 4. Mohan Lal Kaith**  
Superintendent of Police,  
Armed PCR, Parade, Jammu.
- 5. Rajeshwar Singh, AIG Personnel,**  
PHQ, Jammu.

.....Respondent(s)

Through :- Ms. Tehseena Bukhari, Adv. &  
Mr. Anil Kumar, Adv vice  
Mr. A. K. Sawhney, Sr. Adv.  
Mr Zulkernain Choudhary, Adv.

**CRMC No.150/2019**  
CrIM No.369/2019[1/2019]

**Rajeshwar Singh, AIG Personnel,**  
PHQ Gulshan Ground, Jammu  
The then SP City South,  
Gandhi Nagar, Jammu

.....Petitioner

Through :- Mr. J P Gandhi, Adv.

**V/S**

- 1. Rajat Jandial,**  
S/O Sh. Ravinder Gupta  
R/O H. No. 43, Lane NO.7,  
Greater Kailash, Jammu.
- 2. Bishnesh Kumar, SHO**



- Police Station Gandhi Nagar, Jammu
3. J. P. Sharma, Sub-Inspector,  
posted at Central Pool Security,  
DPL, Jammu.
  4. Mohan Lal Kaith  
Superintendent of Police,  
Armed PCR, Parade, Jammu.
  5. Abdul Jabbar (IPS),  
C/O Police Headquarters, Jammu

.....Respondent(s)

Through :- Ms. Tehseena Bukhari, Adv. &  
Mr. Anil Kumar, Adv vice  
Mr. A. K. Sawhney, Sr. Adv.  
Mr Zulkernain Chowdhary, Adv.

**CRMC No.207/2014**  
IA No. 236/2014

1. **J. P. Sharma**  
Sub Inspector  
SHO P/S Gangyal Jammu
2. **Mohan Lal Kaith**  
Dy. SP (SDPO) City South,  
Gandhi Nagar, Jammu.

.....Petitioner

Through :- Mr. J P Gandhi, Adv.

V/S

1. **Rajat Jandial,**  
S/O Sh. Ravinder Gupta  
R/O H. No. 43, Lane No.7,  
Greater Kailash, Jammu.
2. Rajeshwar Singh, AIG Personnel,  
PHQ, Jammu.
3. Bishnesh Kumar, SHO  
Police Station, Gandhi Nagar, Jammu.
4. Abdul Jabbar IPS  
C/O ZPHQ Jammu.

.....Respondent(s)

Through :- Ms. Tehseena Bukhari, Adv. &  
Mr. Anil Kumar, Adv vice  
Mr. A. K. Sawhney, Sr. Adv.  
Mr. Zulkernain Choudhary, Adv.

**CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**



## JUDGMENT

1. By way of this common judgment, this court proposes to dispose of all the above titled clubbed four petitions, in view of identical and similar facts involved in them, arising out of the same complaint, cognizance order dated 05.11.2012 passed by the trial court and order dated 26.05.2014 passed by the Revisional Court upholding the cognizance order, against all the petitioners as accused.

2. Petitioners, invoking the inherent jurisdiction of this court under Sections 561-A of J&K CrPC (akin to Section 482 CrPC and 528 BNSS), inter alia, have prayed quashing of the following:

- (i) *Criminal complaint under Sections 341/ 342 / 447 /452 /506 / 166/ 120-B RPC titled 'Rajat Jandial V/S Sh. J. P. Sharma & Ors.' pending in the Court of Ld. Sub Judge (Special Municipal Mobile Magistrate), Jammu;*
- (ii) *Order dated 05.11.2012 whereby the Court of Ld. Sub-Judge (Special Municipal Mobile Magistrate), Jammu in the aforesaid complaint issued process against the petitioner and proforma respondents under Sections 341/342/506/166/120-B RPC; and*
- (iii) *Order dated 26.05.2014, whereby the Court of Ld. Sessions Judge, Jammu dismissed the revision petition No. 51/Revision titled 'Rajeshwar Singh & Ors. V/S Rajat Jandial & Ors' thereby upholding the order of the learned trial court dated 05.11.2012."*

3. A complaint titled 'Rajat Jandial V. J. P. Sharma & Ors.' came to be filed for the commission of offences punishable U/Ss 341/342/447/448/452/506/166/120-B RPC against the police officers, including the petitioners herein, by respondent No.1-Rajat Jandial before the Court of



learned Chief Judicial Magistrate, Jammu with the accusations that 2026:JKLHC-JMU:1014  
20.01.2012, the accused police officers along with a strong posse of police personnel reached the house of the complainant at Greater Kailash, Jammu and the entire area was cordoned; that at about 3.30- 3.45 pm, when complainant was about to leave in car No.JK02-AU-0018 , for Jammu Airport, he was intercepted by SHO, P/S Gangyal, Jammu who used abusive, aggressive and insulting language, asked the complainant whether he was Gola Shah's son and on getting reply in affirmative, his car was stopped and he was wrongfully restrained; that the said SHO called the other police officers including petitioner Abdul Jabbar from a nearby parked Hyundai vehicle and all the accused entered into the house of the complainant, with the intention to arrest the father of the complainant and during the said exercise, they allegedly committed several illegalities; that the presence of petitioner Bishnesh Kumar, SHO Police Station Gandhi Nagar, Jammu and Abdul Jabbar ASP was 'prima facie' abuse of authority as they were neither associated with any team nor the case, therefore, they were illegally present there; that the raid without any orders is illegal and amounts to excessing of jurisdiction; that the whole incident of raid was allegedly recorded in camera by one police constable brought on spot by Bishnesh Kumar, SHO Police Station Gandhi Nagar, Jammu, which is not permitted under law as it infringes the right to privacy of a citizen especially when women reside in that house.

4. The learned Special Municipal Magistrate, Jammu, vide order dated 05.11.2012, took cognizance against accused including the petitioners herein for the commission of offences punishable under Sections 341/342/506/166/120-B RPC and issued process against them. Petitioners urged before the trial court for



dropping of proceedings on the ground that the prosecution against them<sup>2026:JKLHC-JMU:1014</sup> barred under Section 197 CrPC. The Trial Court, on consideration of the matter after discussing the law laid down by the Apex Court in various cases, came to the conclusion that the presence of accused including the petitioners herein is 'prima facie' abuse of authority and even while conducting search of the entire house, almirahs, sofas, rooms and drawers of the complainant, was illegal and against the procedure envisaged under CrPC; that it was further observed by the trial court that the acts of the accused are also not covered U/S 197 CrPC, because the acts committed have no nexus with the discharge of public duty by the accused persons, who happened to be police officers.

5. The petitioners filed revision petition bearing No.51/revision titled 'Rajeshwar Singh & Ors. V. Rajat Jandyal & Anr.' on 08.11.2012 before the learned Principal Sessions Judge, Jammu, who, vide order dated 26.05.2014, dismissed the revision petition and upheld the order dated 05.11.2012 passed by the Id. Magistrate by holding that petitioners failed to show any illegality, infirmity and impropriety in the impugned order and directed the parties to appear before the trial court on 03.06.2014.

6. The petitioners, in their petitions, have stated that they, as a supervisory officers, had no direct role with the investigation of the case and that they cannot be prosecuted for the commission of any offence relating to their official duty unless a Government sanction is obtained for prosecution and in absence of any such sanction, they cannot be proceeded against in a complaint pending before the Trial Court. The petitioners, in their separate petitions, have stated that they had visited the place of alleged occurrence in connection with an investigation of the case lodged at Police Station, Gangyal, involving the father



of the complainant and two of his associates and that for the enquiry about whereabouts of the accused, i.e., complainant's father, who was alleged to be a history sheeter involved in more than a dozen cases, and to secure his arrest in the latest case registered against him, the police force was brought on spot and the alleged restraining of the complainant was in connection with the investigation of the case only and there was no *mens rea* involved or any *mala fide* intentions on the part of any of the petitioners to commit offences against his person and that the petitioners were performing duties as public servants and they could not be prosecuted without the prior sanction to prosecute them to be issued by the Government, as such, the entertaining of the complaint against them, taking cognizance by the learned Magistrate and upholding the said order by the revisional court were illegal and are liable to be quashed/ set aside.

7. Learned counsel appearing on behalf of the petitioners submit that there was no sufficient material available that would constitute the offences of which the petitioners have been accused; that prior sanction as required in terms of Section 197 CrPC in order to proceed against the petitioners, who were Public Servants, was not obtained, before filing of complaint; that there were as many as 13 FIRs registered against the father of the complainant, who was history sheeter; that the police raided the house of the complainant's father in connection with investigation of a case, registered vide FIR No. 171 of 2011 at Police Station Gangyal U/Ss 301/506/504 RPC, 3/25 Arms Act; that the alleged act of the petitioners would not constitute house trespass; that there was 'mala fide' intention on the part of the complainant to falsely implicate petitioners. Lastly, it is prayed that the complaint filed by the complainant be quashed, along



with subsequent orders passed by the trial court as well as revisional court, being **2025:JKLHC-JMU:1014** unsustainable.

**8.** Learned counsel appearing for the complainant- Rajat Jandial, ex adverso, vehemently, denied the contentions raised in the petitions and opposed the grounds of these petitions as the complainant would suffer an irreparable loss in case the petitions are allowed. They further submit that the petitioners cannot seek immunity from criminal proceedings without sanction under Section 197 CrPC; that the trial court had rightly issued the process against the petitioners and other police officers. Lastly, it is prayed that all the petitions be dismissed.

**9.** Heard learned counsel for the parties at length, perused the record and considered the matter.

**10.** Complainant- respondent Rajat Jandial in his complaint against all the petitioners herein had alleged that on 20.01.2012 when he was about to leave his house towards Airport for some personal work at about 3.35 – 3.40 PM, the petitioner – SI J P Sharma intercepted his car just outside his house at Greater Kailash, Jammu, using abusive, aggressive and insulting language, asking him whether he was son of Gola Shah and on the affirmative reply, his vehicle was stopped, he was restrained directing two PSOs not to allow the complainant to go anywhere or even move out of the vehicle, as such, he was wrongfully restrained in his car and was not allowed to move even an inch; that the said officer then called accused Nos. 3 and 4, Abdul Jabbar and Mohan Lal Kaith who came in police uniform and all of them trespassed into his house/kothi and that the complainant was not allowed to move inside his house to see as to what was happening, however, somehow he managed to escape from the wrongful



confinement and on entry into his house saw accused nos. 1, 3 and 4 standing on his house premises; that on being asked, the police officers told him that they had come to arrest his father Ravinder Gupta @ Gola Shah and asked him to call his father and when he objected to the search of the house without search warrant, all of them hurled abuses and threatened him of dire consequences, in case he argued anymore; that later, with some other police men, the officers with a video camera entered the basement of the house of the complainant's father and made search and created a pandemonium, as such, the complainant and his family had to undergo great mental trauma and stress. As such, all the accused were liable for house trespass, causing intimidation to the complainant, wrongfully and illegally detaining the driver of the complainant and prayed that they be punished for the offences punishable under Sections 341/342/447/448/452/506/166/120-B RPC.

**11.** The Ld. Special Municipal Magistrate Jammu vide order dated 06.07.2012 ordered for holding enquiry in terms of Section 202 CrPC and came to the conclusion that the commission of offences punishable under Sections 341/342/506/166/120-B RPC are spelled out on the part of the accused persons, as they were alleged to have abused their authority and that non compliance of provisions engrafted in CrPC, exceeding their jurisdiction and over stepping the provision, brief given to them to investigate some FIR. The learned Magistrate vide order dated 05.11.2012 came to conclusion, on his satisfaction, that there was sufficient material on the basis of the pre-cognizance evidence /inquiry report and other documents relied upon to take cognizance of the offences under Sections 341/342/506/166/120-B RPC to proceed against the accused and



cognizance for the commission of the aforesaid offences was taken against the accused for their summary trial and process was issued against them.

**12.** Aggrieved of the order passed by the learned Magistrate, the petitioners herein as accused challenged the order dated 05.11.2012 passed by the learned Magistrate, through a Revision Petition before the Principal Sessions Court Jammu on the ground that learned Magistrate miserably failed to understand the import of law as the inquiry could be ordered by the Magistrate after the post cognizance and in the present case, the process has not been issued and the petitioners had been summoned by taking cognizance and issuing process which was unknown to the law; that the learned Magistrate conducted the inquiry after receipt of an enquiry already conducted in terms of Section 202 CrPC by SSP Jammu, as such, the learned Magistrate had to proceed under Section 203 CrPC to dismiss the complaint and not to issue process; that no sanction under Section 197 CrPC had been obtained in the case, as such, no process could be issued by the Trial Court; that the complaint has been filed with mala fide intention to pressurize the petitioners not to go ahead with the investigation of an FIR in which the father of the complainant is an accused.

**13.** The learned Revisional Court vide order dated 26.05.2014, while discussing Section 190 CrPC relating to cognizance of offences by Magistrates held that the Magistrate in terms of Section 200 CrPC has various options, either to direct for issuance of process as contemplated under Section 204 of the Code and in case, if the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to dismiss the complaint under Section 203 of the CrPC, whereas Section 202 of the Code lays down that if on examination of the allegations made in the complaint and the statements of the



complainant on solemn affirmation and the examination of the witnesses, 1016:JKLHC-JMU:1014

Magistrate is of the opinion that there is sufficient ground for proceeding the option available to him is to postpone the issue of process and either to enquire the case himself or direct the investigation to be made by a police officer or by any other person as he thinks fit.

**14.** The learned Revisional Court discussing the process adopted by the learned Magistrate and the receipt of inquiry report filed by the SSP and rejecting the same and further conducting the enquiry itself and then issuing the process, held that the learned Magistrate has followed the procedure as provided under law and cannot be found fault with. With the contention of the petitioners that they being govt. servants cannot be prosecuted in absence of sanction under Section 197 CrPC by the State Government, the Revisional Court while relying upon the law laid down by the Apex Court in Amrik Singh V/S State of Pepsu, AIR 1955 SC 309 and re-stated in State of Orissa V/S Ganesh Chandra Jew, AIR 2004 SC 2179, held that there must be a reasonable connection between the act and discharge of official duty and that such act must be in relation to the duty of the accused lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty, and further holding that petitioners had failed to show any illegality, infirmity and impropriety in the impugned order, dismissed the revision petition.

**15.** Aggrieved of both the orders passed by the learned Magistrate taking cognizance and by the learned Revisional Court upholding the order passed by the learned Magistrate against the petitioners herein, petitioners have invoked the inherent jurisdiction of this court to seek quashment of the complaint and the order dated 05.11.2012 passed by the learned Magistrate taking cognizance and



the order dated 26.05.2014 passed by the learned Revisional Court upheld the order passed by the learned Magistrate. 2025:JKLHC-JMU:1014

**16.** The petitioners, who as police officers were stated to have gone to the house of one Rajinder Gupta @ Gola Shah situate at Greater Kailash, Jammu in connection with investigation of a case registered vide FIR No. 171/2011 for the commission of offences punishable under Section 341/506/504 RPC and 3/25 Arms Act against three persons, namely, Ravinder Gupta @ Gola Shah, Rajinder Singh @ Romi and one Punjabo Ram on the date of alleged occurrence shown in the complaint. It has been pleaded that the father of the complainant Ravinder Gupta @ Gola Shah had been facing investigation/ prosecution in as many as 13 FIRs since the year 2002 to 2011; that the police team had asked complainant about the whereabouts of his father and that police had followed the procedure in accordance with law for the investigation of the case; and that the complainant being son of said Ravinder Gupta @ Gola Shah, in order to scuttle the investigation of the case and to pressurize the police filed false and frivolous impugned complaint against petitioners, under Sections 341/342/447/448/452/ 506/166/120-B RPC before the Court.

**17.** The complainant who was stated to be an Advocate by profession and not required in the case to be investigated against his father had alleged confinement and intimidation at the hands of the police officers accused in the complaint and the learned Magistrate after conducting an enquiry had found Police officers 'prima facie' involved in the commission of offences punishable under Sections 341/342/506/166/120-B RPC and issued the process for their summary trial.



**18.** The petitioners as Police officers, as per the complaint and also 2026:JLHC-JMU:1014 admitted by them, had raided the house of the petitioner's father at Greater Kailash, Jammu to apprehend him in a case registered at Police Station Gangyal vide FIR No. 171/2011 for the commission of some offences, including under the Arms Act. Their case is that the Police force was used as the accused Gola Shah-father of the complainant was a history-sheeter, facing more than a dozen cases. To enquire about the whereabouts of his father from the complainant and to restrain his movement or not to allow him to move away in his car, for the purpose of investigation, cannot be stated to be an offence of wrongful confinement. The SSP, Jammu in an enquiry ordered in terms of a Magisterial order U/S 202 CrPC, concluded that the complaint was false, however, learned Magistrate, taking exception to that report, conducted fresh enquiry itself and took cognizance, that too, without the prior requirement of prosecution sanction; whereas some of the accused Police officers were protected U/S 197 CrPC, from prosecution without sanction to prosecute.

**19.** The contention of the learned counsel for the respondent complainant that all the police officers, arrayed as accused in his complaint, could not have been stated to be investigating the case against complainant's father so as to raid their house. Given the background of the father of the complainant as a history sheeter facing investigation in 13 cases in a short span of nine years from 2002 to 2011, all the petitioners in the hierarchy, may have decided to visit the house of the complainant's father so as to ensure that no hurdle is created to the investigation of the case by the IO at the instance of the complainant's father and this circumstance may have warranted them to have joined the investigation



of the case and they have also submitted that they formed the part of an ~~SD~~ <sup>2026:JKLHC-JMU:1014</sup> though no such order has been placed on the file.

**20.** Section 197 CrPC, which is relevant on the subject is extracted as under for ready reference:

***197. Prosecution of Judges and public servants.***

*(1) When any person who is Judge within the meaning of section 19 of the Ranbir Penal Code or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the State Government or the Government of India, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no Court shall take cognizance of such offence except with the previous sanction –*

*(a) In the case of persons employed in connection with the affairs of the Union, of the Government of India; and*

*(b) In the case of persons employed in connection with the affairs of the State, of the Government.*

*(2) The Government of India or the State Government, as the case may be, may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”*

**21.** Section 197 CrPC, which was applicable at the time of filing of the complaint provided that when any person who is judge within the meaning of Section 19 of the RPC or when any Magistrate or when any public servant who



is not removable from his office save by or with the consent of the State Government or the Government of India, is accused of any offence alleged to have committed by him while acting or purporting to act in the discharge of his official duties, no court can take cognizance of such offence except with the previous sanction. The question that is required to be determined is as to whether the alleged acts of the petitioners, would fall within the scope of his official duties as to attract the provisions contained in Section 197 of CrPC.

**22.** The question that is required to be determined is as to whether the alleged acts of the petitioners would fall within the scope of their official duties as to attract the provisions contained in Section 197 of CrPC. What is meant by acts or purported acts in discharge of official duties has been a subject matter of discussion and debate before the Apex Court in a number of cases. In **(2013) 15 SCC 624**, the Supreme Court in the context of provisions contained in Section 197 CrPC interpreted the expression ‘official duty’ in the following manner.

*“56. The expression "official duty" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the Court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that protection Under Section 197 Code of Criminal Procedure may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what*



*will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression Under Section 197 of the Code.”*

**23. In ‘Devinder Singh & Ors. V. State of Punjab’, (2016) 12 SCC 87,**

the Supreme Court, after taking note of all its previous decisions on the issue, summarized the principles emerging therefrom in paragraph 39 as under:

- I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
- II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Code of Criminal Procedure has to be construed narrowly and in a restricted manner.*
- III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection Under Section 197 Code of Criminal Procedure There cannot be a universal Rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.*
- IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary Under Section 197 Code of Criminal Procedure, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to*



*require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Code of Criminal Procedure would apply.*

- V. *In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*
- VI. *Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*
- VII. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*
- VIII. *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.*



*IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.”*

24. A Co-ordinate Bench of this Court in a case titled ‘**Pawan Singh Rathore V. UT of J&K & Ors. in CRM(M) No.33/2021**’, vide judgment dated 21.11.2024, while dissecting the duty of a police officer and the acts done by him, has observed in paragraph 20 of the judgment, which being relevant is reproduced as under:-

*“20. From the foregoing analysis of law on the subject, it is clear that not only the acts which have been done by a public servant in exercise of his official duty, but even the acts which a public servant has done in purported exercise of official duty, would be covered under the protective umbrella of Section 197 of CrPC. The test is whether there is a reasonable nexus between the act done by a public servant and his official duties. Even if, a public servant has exceeded his powers while discharging his official duties, Section 197 of CrPC would come into play. Thus, in a case where Deputy Superintendent of Police while escorting a prisoner to the Court, beats him up, while the prisoner tries to escape from the custody and in the process, uses excessive force, the Deputy Superintendent of Police would be entitled to protective umbrella of Section 197 of CrPC because preventing a prisoner from escaping the custody is connected with his official duties and in the process, if such*



*police officer has exceeded his powers, he would be acting in purported exercise of his official duty. However, if we take another instance of a police officer thrashing a passerby without any rhyme or reason, in such a case, his act would neither be in the discharge of official duties, nor in the purported discharge of official duties. Thus, the police officer would not be entitled to the protective umbrella of Section 197 of CrPC in such a case.”*

25. In view of the afore-stated enunciations of law on the subject, it is clear that not only the acts which have been done by the public servant in exercise of his official duty but even the acts which a public servant has done in purported exercise of official duty, would be covered under the protective umbrella of Section 197 CrPC, therefore, the test is whether there is a reasonable nexus between act done by public servant and his official duties. Even if a public servant has exceeded his powers while discharging his official duties, Section 197 CrPC would also come into play.

26. The Apex Court in a case titled ‘**G C Manjunath & Ors. V. Seetaram**’ reported as (2025) 5 SCC 390, has held that in a case of alleged police excesses prior sanction to prosecute is mandatory when there exists a reasonable nexus between the act complained of and the discharge of official functions. A similar view has been taken by the Apex Court in ‘*D. Devaraja V. Owais Sabeer Hussain*’ reported as (2020) 7 SCC 695; ‘*Gurmeet Kour V. Davendra Gupta & Anr*’. reported as (2025) 5 SCC 481; and ‘*Anjani Kumar V. State of Bihar*’ reported as (2008) 5 SCC 248.



**27.** So for as the plea for requirement of sanction to prosecute<sup>2026:JKLHC-JMU:1014</sup> concerned, the petitioners- Bishnesh Kumar and J P Sharma, at the time of the alleged occurrence had been working on non gazetted police posts, whileas, petitioners Abdul Jabbar, Mohan Lal Kaith and Rajeshwar Singh had been working on gazetted posts. The non gazetted police officers can be removed from their posts without sanction from the Government, whereas in the case of gazetted police officers, sanction from Government is required. In such a situation, the protection under Section 197 CrPC is applicable in the case of petitioners Abdul Jabbar, Mohan Lal Kaith and Rajeshwar Singh but not in the case of petitioners Bishnesh Kumar and J P Sharma. The learned Magistrate and the Revisional Court, in the considered opinion of this Court, have taken a wrong view with regard to the requirement of sanction to prosecute in terms of Section 197 CrPC in case of petitioners Abdul Jabbar, Mohan Lal Kaith and Rajeshwar Singh. This Court is of the view that the petitioners-Abdul Jabbar, Mohan Lal Kaith and Rajeshwar Singh can be prosecuted for the commission of the alleged offences in the complaint only after obtaining prior sanction to prosecute from the government.

**28.** It is a fact which is borne out from the police reports available on file and also as per allegations of the complainant that a strong pose of police force led by some senior officers had raided the house of the complainant's father at Greater Kailash to arrest the complainant's father and his two associates in a case involving commission of offences, including offences under the Arms Act, as well with regard to its investigation and the complainant cannot say that the petitioners had committed any offence while performing their official duties without a magisterial warrant as no such warrant is required for the arrest of an



accused in cognizable cases. In the opinion of this Court, the aforesaid contention made on behalf of the petitioners seems to be plausible as the police cannot take a chance while investigating a case against a habitual offender as the complainant's father was stated to have been involved in more than a dozen cases in a short span of nine years and also registered as a history sheeter at the local Police Station, as such, the police force has to be used to ensure his arrest in a smooth manner and the complainant, who happens to be the son of the wanted accused, may have objected to the Police Officers, but this Court is of the opinion that the Police Officers cannot be stated to have committed any offence of which they have been charged in the complaint for their summary trial by the learned Magistrate, that too, ignoring the earlier enquiry conducted under Section 202 by SSP Jammu, ordered by the Court and taking upon himself the fresh enquiry, so as to pass the impugned cognizance order.

**29.** Viewed thus, the order dated 05.11.2012 passed by the learned Magistrate taking cognizance of the offences punishable under Sections 341/342/506/166/120-B RPC and the order dated 26.05.2014 passed by the learned Revisional Court upholding the order passed by the learned Magistrate are not sustainable and are liable to be quashed qua petitioners.

**30.** Having regard to the foregoing reasons, discussion made hereinabove and the facts and circumstances of the case, this Court is of the considered opinion that the impugned complaint filed against the petitioners by the complainant is an abuse of the process having been maliciously instituted to cause harassment to the police officers and the impugned cognizance order drawn by the learned Magistrate and upholding the same by the learned

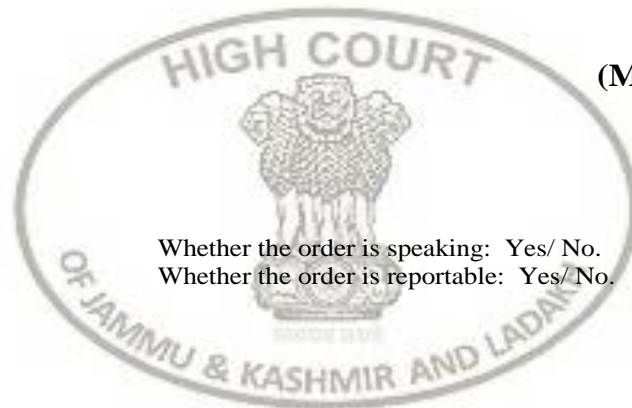


Revisional Court without prior sanction to prosecute are found to be unsustainable and are liable to be quashed/ set aside. 2026:JKLHC-JMU:1014

**31.** As a result, the impugned complaint titled '*Rajat Jandial v. Sh. J. P. Sharma & Ors.*', impugned order dated 05.11.2012 passed by the learned Magistrate and the impugned order dated 26.05.2014 passed by the Revisional Court, being abuse of the process, are hereby quashed/ set aside, qua petitioners. Copy of this Judgment be placed across the files of every clubbed petition, with information to the learned Magistrate.

**32.** All the petitions are **allowed** and shall stand **disposed** of, accordingly, along with pending applications, if any.

JAMMU  
10.04.2026  
Raj Kumar



**(M A Chowdhary)**  
**Judge**