

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

CRM(M) No. 531/2024

Reserved on: 24.07.2026
Pronounced on : 28.07.2026
Uploaded on : 28.07.2026

Whether the operative part or full
judgment is pronounced: Full

Dilbagh Singh
Retd. Head Constable No.
EXJ-875708
S/O Sh. Jagdev Singh
R/O Laswara Deoli
Tehsil Bishnah
District Jammu.

....Petitioners

Through:- Mr. C.B. Slathia, Advocate.

V/S

1. UT of J&K through
Senior Superintendent of
Police, Jammu.
2. Station House Officer,
Police Station,
Channi Himmat, Jammu.

सत्यमेव जयते

.....Respondents

Through:- Mr. Pawan Dev Singh, Dy. AG.

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

01. Petitioner, through the medium of this petition, moved under section 528 of BNSS, 2023 seeks quashment of chargesheet titled 'UT of J&K Vs. Dilbagh Singh' arising out of FIR No. 64/2017 registered on 28.05.2017 for the commission of offences punishable under sections 279/33/304-A RPC pending before the court of learned Judicial Magistrate

(Municipal Magistrate), Jammu mainly on the ground that the petitioner was a public servant on the date of occurrence, when he has been alleged to have committed the offences, during the discharge of his official duties and that without the prosecution sanction under Section 197 CrPC (now Section 218 of BNSS of 2023), he cannot be prosecuted.

02. Pursuant to notice, the respondents have filed status report in the case, asserting that the petitioner had caused accident within the jurisdiction of Police Station, Channi Himmat, Jammu, whereupon a case was registered vide FIR No. 64 of 2017 and after investigation of the case, the chargesheet has been laid in the court of law for the commission of offences punishable under Sections 279, 304-A RPC; that in a petition filed by the father of the deceased before the Motor Accidents Claim Tribunal, the Tribunal had ordered to pay him compensation for an amount of Rs. 7,62,000/- vide award dated 05.10.2013 payable by the Director General of Police.

03. Learned counsel for the petitioner has, vehemently, argued that though a case was registered against the petitioner for having committed an accident by his alleged rash and negligent driving, wherein a cyclist child had lost his life, as such, chargesheet was concluded for the commission of offences punishable under Sections 279/304-A RPC, however, the petitioner, being a public servant, having committed the offences during discharge of his official duty, cannot be prosecuted without a prior sanction from the Government of

UT of J&K in terms of Section 197 CrPC (now Section 218 of BNSS 2023). In support of his contention, he has relied upon the judgment of the Apex Court in a case titled Amal Kumar Jha Vs. State of Chhatisgarh reported as **AIR 2016 SC 2082**.

04. Learned counsel for the respondents, *ex adverso*, argued that the only contention raised by the petitioner in his petition is that he cannot be prosecuted in absence of a prior sanction to prosecute from the Government of UT of J&K; that the petitioner, though a public servant, does not qualify under Section 197 CrPC to claim that a prior sanction for his prosecution is required as his services can be dispensed with without the sanction of the Government. In support of his contention, he has referred to Rule 335 of the J&K Police Rules, which provides that the services of Head Constable, Sr. Grade, the rank which the petitioner claimed to hold, can be dispensed with under the orders of Deputy Inspector General of Police and the same does not require prior sanction of the Government, as such, the contention raised by the learned counsel for the petitioner is misplaced and is liable to be rejected.

05. Heard and considered.

06. It will be profitable to appreciate the rival contentions in the light of Section 197 of J&K CrPC as was applicable on the date of occurrence. The provision is extracted as under:

“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. ”

07. On a careful perusal of the bare provision of Section 197 of J&K CrPC, it is clear that the sanction to prosecute was required for those officials/officers, who cannot be removed from their services without prior sanction of the Government. For invoking this provision of Section 197 Cr.PC, the Service Rules governing the Public Servant are to be kept in view. The public servants can be removed from their services, by the authorities appointing them, is the baseline of the service jurisprudence.

08. Petitioner claims to be Head Constable, at the time of the occurrence. Police Rules provide that a police personnel of the rank of Head Constable can be removed from his service, if a junior grade by Superintendent of Police and if in senior grade by the Deputy Inspector General of Police, in terms of Rule 335 of the Police Rules. As such, no such approval of the Government is required in view of Rule 335 of the J&K Police Rules, for removal of the petitioner from his job. Therefore, in the considered opinion of this Court, there is no requirement

to obtain sanction of the Govt., in terms of Section 197 Cr.PC for prosecution of the petitioner in a criminal case. The plea for quashing the charge-sheet on this count, is, thus, misconceived and is liable to be rejected.

09. The case law relied upon by the learned counsel for the petitioner is with regard to a case where the appellant was incharge of Pathalgaon Hospital of District Raigad, who was charged with regard to a death of a patient for the commission of offence punishable under Section 304-A IPC for his failure to provide official vehicle for shifting the patient to district Hospital, Raigad as Incharge of Primary Health Centre. The appellant, as per his service rules in that case, would have been entitled to such a protection, which was held to be required in the case, however, the case on hand is distinguishable, in view of the differential factual background.

10. For the reasons mentioned herein above, the petition, being devoid of any merit is, accordingly, **dismissed**.

11. Registry is directed to send down, a copy of this order to the trial court for information.

(M A CHOWDHARY)
JUDGE

JAMMU
28.07.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**