

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No.5988/2018

Sishupal S/o Shiv Chand Jat, R/o Bada Pana, Bhodki Police Station Gudha Ghorji, District Jhunjhunu.

-----Petitioner

Versus

1. The State Of Rajasthan through the Public Prosecutor.
2. Mohan Singh S/o Lal Chand, Aged About 52 Years, R/o Bhorki, Police Station Gudha Ghorji, District Jhunjhunu, Raj.

-----Respondents

For Petitioner(s)	:	Dr. Arpan Kumar Sharma for Mr. O.P. Jhajharia
For Respondent(s)	:	Mr. Jitendra Singh Rathore, PP Ms. Neha Goyal
		Mr. Jai Raj Tantia Mr. Aijazul Nabi Khan

JUSTICE ANOOP KUMAR DHAND

Order

27/04/2026

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 16.08.2018 passed by learned Sessions Judge, Jhunjhunu in Criminal Revision No.95/2018 by which the order dated 17.05.2018 passed by Additional Chief Judicial Magistrate, Jhunjhunu has been quashed and set-aside and a direction has been issued to the learned Magistrate to pass order for taking cognizance against the accused-petitioner.

2. Learned counsel for the petitioner submits that an FIR was registered against the petitioner by the complainant-respondent

alleging that using the fabricated signatures of the complainant-respondent on Form Nos.29 and 30, the subject vehicle was transferred in the name of the accused. Learned counsel submits that after thorough investigation in the matter, the Police has submitted Final Report (Negative) in favour of the petitioner and same was accepted by the learned Magistrate vide order dated 17.05.2018. Learned counsel further submits that aggrieved by the aforesaid accepting the FR (Negative), the respondent-complainant submitted a revision petition and the same has been aprtially accepted by the Court of learned Sessions Judge, Jhunjhunu vide impugned order dated 16.08.2018 and a direction has been issued to the learned Magistrate to pass order for taking cognizance against the accused-petitioner. Learned counsel submits that the Revisional Court cannot pass such direction to the learned Magistrate and he could have passed a direction for conducting further enquiry and accordingly passing appropriate orders. Hence, under these circumstances, the impugned order is not sustainable in the eyes of law and is liable to be quashed and set-aside.

3. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment passed by the co-ordinate Bench of this Court in the case of **Lalita Vs. State of Raj. & Anr.** while deciding **S.B. Criminal Misc. Petition No.457/2004** on 08.07.2004.

4. *Per contra*, learned Public Prosecutor as well as learned counsel appearing on behalf of the complainant-respondent opposed the arguments raised by learned counsel for the petitioner and submitted that upon finding a *prima face* case

against the petitioner, the Revisional Court has issued a direction to the learned Magistrate to pass order taking cognizance against the accused-petitioner. Hence, under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

5. Heard and considered the submissions made at the Bar and perused the material available on record.

6. This Court finds subsistence in the arguments raised by learned counsel for the petitioner that the Revisional Court has no jurisdiction to issue such directions to the Trial Court or the Magistrate to take cognizance against an accused, as the same has been held by the Co-ordinate Bench of this Court in the case of **Gulab Jati & Ors. Vs. State of Raj. & Ors.** reported in **2001 SCC OnLine Raj 1309**.

7. Perusal of the provisions contained under Section 398 Cr.P.C. indicates that the Revisional Court can issue a direction to the learned Magistrate for passing fresh order after holding his inquiry, but in any case, no direction can be issued to the learned Magistrate for taking cognizance against the accused.

8. For the reasons stated above, the impugned order dated 16.08.2018 passed by the Revisional Court is not sustainable in the eyes of law and is liable to be and is hereby quashed and set-aside and the matter is remitted to the learned Magistrate to pass fresh order after holding due inquiry.

9. In view of above, the instant criminal misc. petition stands disposed of. Stay application as well as all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J