

**COURT OF THE SPECIAL MOBILE MAGISTRATE PT&E  
AT SRINAGAR**

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<b>CNR:</b>	<b>JKSG02-000816-2024</b>
<b>Case No:</b>	<b>454/2024</b>
<b>Date of Institution:</b>	<b>06.03.2024</b>
<b>Date of Judgment:</b>	<b>04.04.2026</b>

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1. Farida Shabnum [REDACTED]
2. Junaid Rashid Wani [REDACTED]
3. Arsalan Rashid Wani [REDACTED]

**...Plaintiffs**

Through: Adv. Toufiq Ahmad & Associates

**VERSUS**

1. Union Territory of Jammu and Kashmir through its Chief Secretary to Government, Civil Secretariat Srinagar/Jammu
2. Registrar Births and Deaths, Srinagar Municipal Corporation Srinagar

**...Defendants**

Through: Standing Counsel, Basharat Majid

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In the matter of: **-Suit for Injunction and Declaration**

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**CORAM: - Massarat Jabeen      JO Code: JK 00244**

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**JUDGMENT**

1. Instant suit came to be instituted by the plaintiffs seeking for following reliefs:

***“A decree of Declaration declaring Abdul Rashid Wani as Dead.***

***A mandatory injunction commanding upon the defendants particularly the defendant no.2 issue Death Certificate of Abdul Rashid Wani S/o Abdul Samad***

**Wani R/o Madina Colony  
Bemina Srinagar in favour of the  
plaintiffs, as for the act the plaintiff as  
in duty bound shall ever pray.”**

**2.** It is averred in the plaint by the plaintiffs that Abdul Rashid Wani was taken into custody by personnel of 2/8 Gorkha Rifles on 07/07/1997 at Rawalpora Srinagar alongwith one Farooq Ahmad Bhat in a vehicle bearing registration no. 1674/JK01C. However, Farooq Ahmad Bhat was subsequently released and Abdul Rashid Wani never returned, and his whereabouts remained unknown since the said date. The plaintiffs have failed to secure his release or trace his whereabouts, approached the Hon'ble High Court of J&K by filling a written petition no. 139/1997. Pursuant thereto directions were issued to register a criminal case. Consequently, after an inquiry conducted by the Worthy Session Judge Srinagar regarding custodial disappearance FIR No. 180/02 was registered at Police Station Parimpora Srinagar. However, despite investigation, no fruitful outcome emerged and the case culminated in submission of final report.

**3.** It is further averred that Abdul Rashid Wani has not been heard of since 07/07/1997 by any person who would naturally have heard of him including his immediate family members, and more than seven years have elapsed since his disappearance. A statutory notice too was served upon the defendants, but no relief was granted compelling the plaintiffs to file the present suit.

**4.** Upon presentation of the suit, other side after causing their appearance filed written statement. In their written statement other side has submitted that the suit has been filed by suppressing the material facts and suggesting false fabricated facts. Therefore, there is suppressio veri and suggestio falsi, thus suit deserves outright dismissal. It is then stated that the defendants have no role in tracing out or declaring anybody dead merely because his whereabouts

are not known. Declaring any person whose whereabouts are not known falls outside the domain of the answering defendants, no cause of action has accrued to the Plaintiff(s) against the answering defendants as the answering defendants are not the proper parties to the suit, thus the suit deserves outright dismissal for non-joinder of necessary parties. The defendants have no legal sanctity to declare any person dead in the absence of any proper & thorough investigation by the Police agencies.

**5.** After recording the preliminary statement, the following issues were framed vide order dated 27.06.2024:

- I. *Whether the husband of plaintiff no.1 was taken bundled by 2/8 Gorkha Rifles on 07.07.1997 in a vehicle bearing no.1674/JK 01C at Rawalpura along with one Farooq Ahmad Bhat.? OPP*
- II. *Whether Farooq Ahmad Bhat was released later on and husband of plaintiff no.1 was still in continuous detention? OPP*
- III. *Whether any investigation was conducted by the Id court of Sessions Judge Srinagar. If yes then what was the report filed before such court.? OPP*
- IV. *Whether FIR No.182/2002 was registered before the police station Parimpora Srinagar? What was the final report of that FIR.? OPP*
- V. *Whether the husband of plaintiff no.1 is continuously missing for more than 7 years.? OPP*
- VI. *Whether the whereabouts of the husband of the plaintiff no.1 as not been heard by these who would have naturally heard of his presence if husband of plaintiff no.1 was alive.*
- VII. *Whether the suit is hit by non-joinder & mis-joinder of parties? (OPD)*
- VIII. *Whether the suit is hit by section 80 of CPC? (OPD)*
- IX. *Whether this suit is barred by law and is liable to be dismissed under O-7 R-11? (OPD)*
- X. *Relief? (OPP)*

**6.** The issues 7, 8 and 9 were treated as preliminary issues and parties were directed to advance arguments on the said issues. After hearing both the sides, this Court vide a detailed and well-reasoned order dated 18.03.2025 decided the preliminary issues in favour of the plaintiffs. The parties were directed to proceed with their witnesses.

**7.** The plaintiff during the course of trial produced five witnesses, in the shape of affidavits, who were duly cross-examined by the defendants' counsel. Before proceedings ahead in the matter, it would be profitable to reproduce the statements of plaintiffs' witnesses recorded and cross-examined before the Court.

**8. Statement of Fareeda Shabnam (plaintiff no.1) on affidavit submitted on 06.08.2025.** The witness deposed that; "That the deponent is the plaintiff no. 1 in above titled suit. That the husband of deponent (i.e Abdul Rashid Wani) was taken away by 2/8 Gorkha Rifles on 07-07-1997 in a vehicle bearing no. 1674/JK01C at Rawalpura, Sgr. along with one Farooq Ahmad Bhat. That the said Farooq Ahmad Bhat was released but husband of deponent was still in detention against which a petition under Section 491 CrPC was filed before the Hon'ble High Court of Jammu and Kashmir vide petition No. 139/1997 whereby the state was directed to register a criminal case and an enquiry was conducted by Court of Session Judge Srinagar, and as a consequence a FIR was lodged in police station Parimpora, who were also unable to trace the husband of deponent. That till now the whereabouts of the husband of deponent is not known despite of numerous efforts by the plaintiffs. That the husband of deponent is missing for more than 28 years now."

**9.** The witness then deposed before the Court on 06.08.2025 that the FIR copy is correct. **During cross-examination recorded** on 06.08.2025, the witness deposed that the occurrence is of 07.07.1997, her husband was on a scooter. In the meantime, one person came in a vehicle;

then stated in a civil matador; which had 2/8 Gorkha Regiments and they stopped witness's husband and kidnapped him. The witness does not remember the colour of matador. She doesn't also remember its number. Her witness affidavit was prepared on her direction. No further questions.

**10. Statement of Junaid Rashid Wani (plaintiff no.2) on affidavit submitted on 12.06.2025:** The witness deposed that; "That the deponent is the plaintiff no. 2 in above titled suit. That the father of deponent (i.e Abdul Rashid Wani) was taken away by 2/8 Gorkha Rifles on 07-07-1997 in a vehicle bearing no. 1674/JK01C at Rawalpura, Sgr. along with one Farooq Ahmad Bhat. That the said Farooq Ahmad Bhat was released but father of deponent was still in detention against which a petition under Section 491 CrPC was filed before the Hon'ble High Court of Jammu and Kashmir vide petition No. 139/1997 whereby the state was directed to register a criminal case and an enquiry was conducted by Court of Session Judge Srinagar, and as a consequences a FIR was lodged in police station Parimpura, who were also unable to trace the father of deponent. That till now the whereabouts of the father of deponent is not known despite of numerous efforts by the plaintiffs. That the father of deponent is missing for more than 28 years now".

**11.** The witness further deposed before the Court on 22.07.2025 that missing Abdul Rashid Wani is his father. The witness was shown the FIR copy; he admits it to be same which was obtained from the concerned police station. **During cross-examination** recorded on 22.07.2025, the witness deposed that the Hon'ble Court of Sessions directed the police to lodge FIR; however, the witness does not remember whether it is mentioned in his statement on affidavit or not. Along with his father, police had also arrested/kidnapped Farooq Ahmad; then stated Farooq Ahmad Bhat. The witness does not know Farooq Ahmad Bhat. The witness and his family also went to Human Rights. They also published it on newspaper. At the time of

his kidnapping, the witness was 11-years old. The occurrence is of 07.07.1997. No further questions.

**12. Statement of Arsalan Rashid Wani (plaintiff no.3) on affidavit submitted on 12.06.2025.** The witness deposed that; “That the deponent is the plaintiff no.2 in above titled suit. That the father of deponent (i.e Abdul Rashid Wani) was taken away by 2/8 Gorkha Rifles on 07-07-1997 in a vehicle bearing no. 1674/JK01C at Rawalpura, Sgr. along with one Farooq Ahmad Bhat. That the said Farooq Ahmad Bhat was released but father of deponent was still in detention against which a petition under Section 491 CrPC was filed before the Hon’ble High Court of Jammu and Kashmir vide petition No. 139/1997 whereby the state was directed to register a criminal case and an enquiry was conducted by Court of Session Judge Srinagar, and as a consequences a FIR was lodged in police station Parimpura, who were also unable to trace the father of deponent. That till now the whereabouts of the father of deponent is not known despite of numerous efforts by the plaintiffs. That the father of deponent is missing for more than 28 years now.”

**13. During cross-examination** recorded on 06.08.2025, the witness deposed that an application was filed for lodgment of FIR and on the directions of Hon’ble High Court, which were forwarded to Hon’ble Principal District Judge, an FIR was lodged. Thereafter, on the instructions of Hon’ble Principal District Judge, FIR was registered. The witness does not remember the date of FIR. It is mentioned in the FIR that in Parimpura area, Gorkha Regiment Rifle kidnapped Abdul Rashid and one other person namely Farooq Ahmad Bhat, who was later released. However, Abdul Rashid Wani was not released. At that time, the witness was around 10-11 years old but to his recollection, he can state the date and year. He (Abdul Rashid Wani) was kidnapped in a Tata vehicle; however, the witness does not remember its colour. No further questions.

**14. Statement of plaintiffs' witness, Mohammad Anwar Mattoo S/o Abdul Salaam Matoo R/o Bemina, Srinagar on affidavit submitted on 12.06.2025.** The witness deposed that; "That the deponent is the brother of plaintiff no. 1 in above titled suit. That the husband of plaintiff no. 1 and father of plaintiffs 2 to 3 (i.e Abdul Rashid Wani) was taken away by 2/8 Gorkha Rifles on 07-07-1997 in a vehicle bearing no. 1674/JK01C at Rawalpora, Sgr. along with one Farooq Ahmad Bhat. That the said Farooq Ahmad Bhat was released but said Abdul Rashid Wani was still in detention against which a petition under Section 491 CrPC was filed before the Hon'ble High Court of Jammu and Kashmir vide petition No. 139/1997 whereby the state was directed to register a criminal case and an enquiry was conducted by Court of Session Judge Srinagar, and as a consequences a FIR was lodged in police station Parimpora, who were also unable to trace the father of deponent. That till now the whereabouts of the said Abdul Rashid Wani is not known despite of numerous efforts by the plaintiffs. That the father of deponent is missing for more than 28 years now."

**15. During cross-examination** recorded on 22.07.2025, the witness deposed that plaintiff No.1 is his sister. He is under-matric qualified. He himself filed application for registration of FIR before the police station. Gorkha Regiment kidnapped Abdul Rashid and another person namely Farooq Ahmad Bhat, who was later released but Abdul Rashid was not released. The occurrence is of 07<sup>th</sup> July, 1997. No further questions.

**16. Statement of plaintiffs' witness, Fayaz Ahmad Sheikh S/o Sana-ul-lah Sheikh R/o Bemina, Srinagar on affidavit submitted on 12.06.2025.** The witness deposed that; "That the deponent is a neighbor of plaintiffs in above titled suit. That the husband of plaintiff no. 1 and father of plaintiffs 2 to 3 (i. e Abdul Rashid Wani) was taken away by 2/8 Gorkha Rifles on 07-07-1997 in a vehicle bearing no. 1674/JK01C at Rawalpora, Sgr. along with one Farooq

Ahmad Bhat. That the said Farooq Ahmad Bhat was released but said Abdul Rashid Wani was still in detention against which a petition under Section 491 CrPC was filed before the Hon'ble High Court of Jammu and Kashmir vide petition No. 139/1997 whereby the state was directed to register a criminal case and an enquiry was conducted by Court of Session Judge Srinagar, and as a consequences a FIR was lodged in police station Parimpora, who were also unable to trace the father of deponent. That till now the whereabouts of the said Abdul Rashid Wani is not known despite of numerous efforts by the plaintiffs. That the father of deponent is missing for more than 28 years now."

**17. During cross-examination** recorded on 22.08.2025, the witness deposed that he is the neighbor of the plaintiffs. Abdul Rashid was kidnapped by Reshtriya Rifles; then stated Gorkha Rifles. Along with Abdul Rashid, one more person was kidnapped. They were taken in a Tata vehicle; but the witness doesn't remember it's number. The family of Abdul Rashid moved to Hon'ble High Court and thereafter, on the directions of Sessions Court, FIR was registered. The witness has provided his witness affidavit but he is not well acquainted with English language. The point in his affidavit "that the father of deponent is missing for more than 28 years now", is actual with respect to Abdul Rashid and an error has occurred there. No further questions.

**18.** After closing of witnesses for plaintiff, the defendants submitted that they do not want to lead any witnesses as such the right of leading witnesses for defendants was closed after taking signature of the standing counsel for defendants. The file accordingly was kept for arguments.

**19. Heard and perused.**

**20.** The issues for determination which arises are

- I. Whether the husband of plaintiff no.1 was taken bundled by 2/8 Gorkha Rifles on 07.07.1997 in a vehicle bearing no.1674/JK

01C at Rawalpura alongwith one Farooq Ahmad Bhat?

- II. Whether Farooq Ahmad Bhat was released later on and husband of plaintiff no.1 was still in continuous detention?
- III. Whether any investigation was conducted by the Id court of Sessions Judge Srinagar. If yes then what was the report filed before such court?
- IV. Whether FIR No.182/2002 was registered before the police station Parimpora Srinagar? What was the final report of that FIR?
- V. Whether the husband of plaintiff no.1 is continuously missing for more than 7 years?
- VI. Whether the whereabouts of the husband of the plaintiff no.1 as not been heard by these who would have naturally heard of his presence if husband of plaintiff no.1 was alive?
- VII. Whether the plaintiff is entitled to the reliefs sought for?

### **OBSERVATIONS AND FINDINGS**

**21. Issue No.1:***Whether the husband of plaintiff no.1 was taken bundled by 2/8 Gorkha Rifles on 07.07.1997 in a vehicle bearing no.1674/JK 01C at Rawalpuraalongwith one Farooq Ahmad Bhat?* The plaintiffs have pleaded and substantiated that the husband of plaintiff no. 1, namely Abdul Rashid Wani, was apprehended by personal of 2/8 Gorkha Rifles on 07/07/1997. The said fact finds corroboration from the filing of a Habeas Corpus Petition under Section 491 of CrPC before the Hon'ble High Court of J&K and Ladakh and subsequent judicial directions for inquiry into the alleged custodial disappearance. The inquiry was conducted by the Worthy Sessions Judge, Srinagar. The

inquiry report so submitted further substantiates The claim which reflects that during the investigation of case FIR No. 180/2002 under Section 364 RPC registered at Police Station Parimpora, Srinagar, it came to fore that Abdul Rashid Wani S/o Abdul Samad Wani R/o Madina Colony Bemina Srinagar was taken into custody by the army along with one more person namely Farooq Ahmad Bhat. It further reveals that actually, the accused (Major V.P Yadav) had murdered Abdul Rashid Wani in his custody and had disposed of his corpse.

**22.** The consistent version of the plaintiffs coupled with the absence of any rebuttal evidence from the defendants leads credence to the claim that the missing was person was taken into custody. **Accordingly, this issue is decided in favour of the plaintiffs.**

**23. Issue No. 02:** *Whether Farooq Ahmad Bhat was released later on and husband of plaintiff no.1 was still in continuous detention?* From the statement of witnesses of plaintiffs recorded, it is quite clear that Abdul Rashid Wani alongwith one Farooq Ahmad Bhat were taken into custody by GorkhaRiffles on 07/07/1997 at Rawalpura and later on Farooq Ahmad Bhat came to be released, however, Abdul Rashid Wani continued to remain in the custody & thereafter went missing. These assertions remain uncontroverted as no evidence has been led by the defendants to show that AbdulRashid Wani was ever released from custody. The fact that one detainee namely Farooq Ahmad Bhat was released strengthens the inference that the other detainee namely Abdul Rashid Wani continued in custody and his disappearance is attributable to such detention. **Hence the issue is proved in favour of plaintiffs.**

**24. Issue No. 03:** *Whether any investigation was conducted by the Id court of Sessions Judge Srinagar. If yes then what was the report filed before such court?* Perusal of the record

reflects that pursuant to the directions of the Hon'ble High Court, an inquiry into the custodial disappearance was entrusted to Worthy Sessions Judge Srinagar. The said inquiry culminated in findings pointing towards the disappearance of Abdul Rashid Wani while in custody. The report of Worthy Sessions Judge Srinagar formed the basis for further criminal action, including registration of FIR. The existence of such inquiry proceedings and report has not been disputed by the defendants. The inquiry reports reads that during the investigation of case FIR No. 180/2002 under Section 364 RPC registered at Police Station Parimpora, Srinagar, it came to fore that Abdul Rashid Wani S/o Abdul Samad Wani R/o Madina Colony Bemina Srinagar was taken into custody by the army along with one more person namely Farooq Ahmad Bhat. It further reveals that actually, the accused (Major V.P Yadav) had murdered Abdul Rashid Wani in his custody and had disposed of his corpse.

**25.** Therefore, in light of the statement of witnesses recorded in favour of plaintiffs and the report of inquiry submitted **the issue stands proved in favour of plaintiffs.**

**26. Issue no. 04:***Whether FIR No.182/2002 was registered before the police station Parimpora Srinagar? What was the final report of that FIR?* Perusal of the record upon an inquiry by Worthy Sessions Judge Srinagar, which is a part of the record reflects that an FIR bearing registration no. 180/2004 as placed on record was registered at Police Station Parimpora, Srinagar. The investigation conducted pursuant thereto did not yield any conclusive result regarding the whereabouts of Abdul Rashid Wani. The police submitted a final report which reflects that Abdul Rashid Wani has been killed in the custody. The findings of the above referred report and statement of the witnesses produced in support of plaintiffs clearly indicate that despite investigation, the missing person could not be traced. Therefore, this issue in light of the statement of plaintiffs witnesses and report submitted by investigating

agencies pursuant to registration of FIR No.182/2002 **the issue stands proved in favour of plaintiffs.**

**27. Issue No. 05:** *Whether the husband of plaintiff no.1 is continuously missing for more than 7 years?*The disappearance of Abdul Rashid Wani dates back to 07/07/1997. The present proceedings have been initiated long after the lapse of seven years from the date of occurrence. There is no evidence on record to suggest that he has been seen or heard of after the date of disappearance. Thus, the statutory requirement of continuous absence for more than seven years stands satisfied. From the perusal of the statement of witnesses recorded and inquiry report submitted in lieu of FIR registered in the instant matter. It is clearly reflected that plaintiffs have been able to carve out a case in their favour. The statement of the witnesses of plaintiffs so recorded stands un rebutted. Therefore, this court has every reason to believe the testimonies so deposed. **Therefore, issue no 05 stands proved in favor of plaintiffs.**

**28. Issue no. 06:** *Whether the whereabouts of the husband of the plaintiff no.1 as not been heard by these who would have naturally heard of his presence if husband of plaintiff no.1 was alive?*The plaintiffs being the immediate family members wife and children are the most natural persons who would have heard from Abdul Rashid Wani had he been alive.Their unchallenged testimony established that no communication has been received from him since 07/07/1997. No relative, friend or acquaintance has reported any information about his existence. In terms of Section 108 of Indian Evidence Act (Bharatiya Sakshya Adhinyam, 2023).Once it is shown that a person has not been heard of for seven years by those who would naturally have heard of him, a presumption of death arises. The defendants have failed to rebut this presumption as well. **Hence, the issue is decided in favour of the plaintiffs.**

**29.** In view of the above, this court is of the considered opinion that the plaintiffs are entitled to the relief sought for. All the issues, as such, have been proved by the plaintiffs. The cumulative effect of the evidence establishes that Abdul Rashid Wani was taken into custody by Gorkha Rifles 8/20 on 07/07/1997 & thereafter disappeared. His whereabouts remain unknown despite judicial inquiry and police investigation. He has not been heard of for more than seven years by those who would have naturally heard of him. Thus, the legal presumption of death squarely applies.

**30.** In light of the above findings, the suit is decreed in favour of the plaintiffs and following decrees are passed:

- i. A decree of Declaration declaring Abdul Rashid Wani S/o Abdul Samad Wani R/o Madina Colony Bemina Srinagar as Dead.**
- ii. A decree in the nature of mandatory injunction direction the defendants particularly the defendant no.2 to issue Death Certificate of Abdul Rashid Wani S/o Abdul Samad Wani R/o Madina Colony Bemina Srinagar in favour of the plaintiffs.**

**31.** No orders as to the costs. Office is directed to prepare the decree sheet accordingly. Disposed of. Be consigned to records under rules.

**Announced:  
04.04.2026.**

**Massarat Jabeen (Sub-judge)  
Spl. Mobile Magistrate, (PT&E)  
At Srinagar**