HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

i) CRM (M) No. 577/2022 c/w
ii) CRM (M) No. 578/2022

Reserved on: 01.10.2026
Pronounced on: 07 .10.2026
Uploaded on: 07.10.2026
Whether the operative part or full judgment is pronounced: Full

i) Rohit Sharma and others
ii) Khalid Ashraf and others

…. Petitioner(s)

Through: Mr Jasbir Singh Jasrotia, Advocate

V/s

Union Territory of J and K and another

….Respondent(s)

Through: Mr Sumeet Bhatia, GA
Mr Asheesh Singh Kotwal, Advocate

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01/- These two petitions pertain to and raise a similar point for adjudication, therefore, both are taken up together for disposal by this order.

02/- The petitioners, police officials have invoked the inherent jurisdiction of this Court under Section 482 Cr PC to challenge and seek quashing of the orders dated 04.07.2022, passed by the learned Principal Sessions Judge, Reasi, in a revision petition preferred by the petitioners against the order dated 05.05.2022, passed in a complaint titled *Prem Singh v. Rohit Sharma and others*, by the Additional Special Mobile Magistrate, Reasi, together with such complaint, directing the SHO, Police Station, Chasana, to register an FIR in the said complaint.

FACTUAL MATRIX:

03/- Respondent No. 2 is stated to have filed two private complaints before the learned Additional Special Mobile Magistrate, Reasi, for short trial court, alleging that the petitioners attempted to kill him and his family members by

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trying to set ablaze their premises. The learned Magistrate in terms of Order dated 05.05.2022 directed the SHO Chasana to register an FIR in the complaint. The operative portion of the order, for facility of reference is reproduced herein:

> *"5. Applying my mind in the facts of the instant application, it is clear that applicant has come to the court after exhausting the remedies of approaching concerned police station and SSP for the lodging of FIR but without any reason same was not done. Further application has been accompanied with the statutory affidavit. Therefore all the mandatory requirements laid down by the Hon'ble Supreme Court in Priyanka Srivasatava & another Versus State of UP, has been complied with.*
>
> *6. As such the SHO Chassana is hereby directed to register a FIR against the non-applicants/accused persons and investigate into the matter. The application is disposed of and confined to the records after its due compliance.*
>
> *7. A copy of this order has been forwarded to Incharge police station chassana for its compliance under the rules."*

04/- The petitioners' case is that they had gone to arrest respondent No. 2 in connection with case FIR No. 47/2020, for offences under 376-D, 452, 109, 147 IPC registered on the written report of his own daughter dated 02.09.2020, that her father, respondent no. 2 along with her step brother have raped her. It is stated in the petition that two complaints were filed by respondent no. 2 before the trial court to deflect that investigation and to pressurize the police officials.

05/- The petitioners are stated to have first approached the learned Principal Sessions Judge, Reasi, for short revisional court, by filing a revision petition. By an order dated 04.07.2022, the revision petition was dismissed as not maintainable on the ground that the order under challenge is interlocutory.

06/- The petitioners' main grounds of challenge are that:
(i) the complaint was not supported by an affidavit; (ii) the jurisdiction to try the matter was vested with the Judicial Magistrate Mahore; (iii) the learned Magistrate did not apply his mind or record any satisfaction before directing investigation; and (iv) respondent No. 2 is a history-sheeter and habitual offender, and the complaint is *mala fide*.

07/- I have heard learned counsel for the parties and perused the record.

08/- In this case the complainant has filed two complaints under section 156 CrPC. Section 156 CrPC reads as under:

> ***"156. Police officer's power to investigate congnizable case***.-
>
> (1) *Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> (2) *No proceeding of a police officer in any such case shall atany stage be called in question on the ground that the case was one which such officer was no empowered under this section to investigate.*
>
> (3) *Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."*

09/- The explicit directions passed in case titled *Father Thomas v. State of U.P*., reported as (2011) 1 SCC 462, by the Supreme Court leaves no scope for any second opinion that a revision will not lie against an order directing investigation under Section 156 (3) CrPC, being an interlocutory order, and the revisional bar in Section 397 (2) CrPC, applies to it. The accused has no right of hearing at that stage. The learned Principal Sessions Judge, Reasi, was, therefore, right to decline the revisional jurisdiction. That does not, however, leave the petitioners remediless. Where the order is alleged to be passed without jurisdiction or in disregard of mandatory requirements, this Court can intervene under Section 482 CrPC [5d28 BNSS] to prevent abuse of the process of the court. Having said that, the petition in hand against the impugned order is maintainable.

10/- The Apex Court in case titled *Priyanka Srivastava & Anr vs State of U.P. & Ors*, reported as (2015) 6 SCC 287, has laid down the

principles governing the subject. It would be apt to reproduce paragraph Nos. 17 & 29 to 31 herein:

> "17. The learned Magistrate, as we find, while exercising the power under Section 156 (3) Cr.P.C., has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156 (3) Cr.P.C., cannot be marginalized."
>
> "29. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows :
>
> > "32. Protection of action taken in good faith.-
> >
> > No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."
>
> 30. In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needles to emphasize, the legislative mandate, has to be kept in mind.
>
> 31. In view of the aforesaid analysis, we allow the appeal, set aside the order passed by the High Court and quash the registration of the FIR in case Crime No.298 of 2011, registered with Police Station, Bhelupur, District Varanasi, U.P."

11/- The Supreme Court in *Priyanka Srivastava (supra).*, has also held that an application under Section 156 (3) must be supported by an affidavit so as to deter casual and *mala fide* applications, which are especially likely where the allegations are made against public servants. The requirement is now

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statutory under the proviso to Section 175(3) BNSS, though not applicable to the instant case being ante-dated.

12/- A direction to investigate is a judicial act. It requires the Magistrate to apply his mind as to whether the complaint discloses a cognizable offence and whether police investigation is needed, and the order should reflect this. It is so provided by the Apex Court in cases titled *Anil Kumar v. M. K. Aiyappa*, reported as (2013) 10 SCC 705 & *Mohd. Yousuf v. Afaq Jahan*, reported as (2006) 1 SCC 627. The impugned order, on the face of it, records no such satisfaction. It does not refer to the allegations, to any *prima facie* material, or to why police investigation was necessary, particularly when the allegation is against the concerned police personnel only. Had the trial court made an endeavour to enquire the matter itself, it would have certainly got a chance to consider the competing version that the petitioners went to the premises of the respondent no. 2 to execute an arrest. A direction of this kind, where the complaint is against police officers for acts allegedly done in the course of their duty, calls for particular care and caution.

13/- The plea that respondent No. 2 is a history-sheeter and habitual offender does not, by default call for quashing the complaint. A complainant's antecedents may be relevant to assessing credibility, but they do not decide whether a cognizable offence is disclosed, and a person with a criminal record is not barred from complaining of an offence against him. This Court expresses no opinion on the merits of either version, and the learned Magistrate may take the complainant's antecedents into account while considering the complaint.

14/- The learned Magistrate has not recorded any satisfaction with respect to the fact that the allegations leveled in the complaint discloses commission of offences that has necessitated investigation under section 156 (3) Cr.P.C.

15/- The court had the occasion to go through an order dated 15.07.2025, placed on record by the petitioners, passed by the learned Chief Judicial Magistrate, Reasi, in respect of the complaint filed by the same complainant against the police personnel only, however, on defamation grounds. In the said complaint also the commission of cognizable offence was alleged to have been committed by the police personnel, but the learned CJM Reasi, thoroughly examined the contents of the complaint, dealt with it in

accordance with law and after deriving satisfaction that no *prima facie* case is made out against the accused, dismissed the same. By such assertion it does not *ipso facto* mean that complaint should have been necessarily dismissed only, but it does safely imply that the learned Magistrate appears to have deviated from the established norm by directing registration of FIR straightaway more particularly for the reason that the learned Magistrate, appear to have been oblivious to the fact that the complaint has been filed against the police personnel as nowhere does the Magistrate mention such a fact in the impugned order.

16/- It would be apt to mention here that the respondent no. 1 in his reply has stated in unambiguous terms that the complainant/ respondent no. 2 is a habitual offender and history-sheeter, however, the court has consciously left that aspect of the matter untouched and the matter has been solely decided on the ground that the order impugned is a non-speaking order.

CONCLUSION:

17/- The petitions are, therefore, disposed of as follows:

(i) The order dated 05.05.2022, passed by the learned Additional Special Mobile Magistrate, Reasi, is set aside, and any investigation or proceedings consequent upon it shall not proceed on the strength of that order.

(ii) The complaint is restored to the file of the learned Magistrate for reconsideration of the complainant's prayer in accordance with law. The complainant-respondent no. 2 is directed to appear before the Magistrate either in person or through his counsel on 23.10.2022. Learned Magistrate shall pass fresh orders in the said complaints in accordance with law, preferably within a period of 15 days from the receipt of this order.

(iii) Nothing in this order is an expression of opinion on the merits of the allegations, the observations made are only for the purpose of deciding this petition.

18/- Registry shall send a copy of this order to the trial court for compliance, and the parties shall appear before him on 23rd October, 2026.

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19/- The petitions shall stand disposed of.

20/- Registry shall place a copy of this judgment on each file.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
07.10.2026
Amjad Lone, Joint Reg/Secy

Whether the judgment is reportable: Yes/No.

Whether the judgment is speaking: Yes.



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