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

Reserved on: 31.05.2025
Pronounced on: 06.06.2025

CRM(M) No.119/2022

SYED MUIZ QADRI & OTHERS ...PETITIONER(S)

Through: - Mr. Salih Pirzada, Advocate,
With Mr. Bhat Shafi, Advocate.

Vs.

UT OF J&K AND OTHERS …RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged order dated 25.03.2022 passed by learned Judicial Magistrate 1st Class, Vailoo and the consequential FIR No.55/2022 for offences under Section 447, 354 and 506 of IPC registered with Police Staton, Kokernag.

2) It appears that respondent No.3 filed an application under Section 156(3) of Cr. P. C before the learned Judicial Magistrate, 1st Class, Vailoo, alleging therein that they are running a trust under the name of Darul Arifa Hazrat Khadijatul Qubra (RA) at Tasspora Gadool Tehsil Kokernag District Anantnag and imparting education (religious/ technical) to the poor orphan girls with hostel and mess facilities. It was stated in the application that the trust has

been constructed on the proprietary land and adjacent to the proprietary land, there is a portion of State land which is also recorded in the name of the trust under the J&K State Lands (Vesting of Ownership to Occupants) Act (hereinafter referred to as "the ROSHNI Act") on paying the fee/consideration amount of Rs.70,000/. It was contended that after the abrogation of the aforesaid Act, the revenue authorities are causing interference in the aforesaid property. According to the complainant, a request was made to the revenue officials not to cause interference and that the trust is ready to provide proprietary land to the Government in exchange of the State land already under its occupation but the revenue officials turned a deaf ear to their request. It was submitted that the trust has spent a huge amount of money on the construction.

3) After narrating the aforesaid facts, the complainant alleged that on 11.03.2022 at about 10.00 am, the petitioners forcibly entered the trust premises without any prior notice and lawful authority and started harassing the female orphan students, forcibly threw the female students out of the kitchen/mess and dining hall and locked the same and even outraged modesty of the female students. It was further alleged that the petitioners threatened the students as well as employees of the trust of dire

consequences. It was further pleaded that the incident was reported to the police authorities but they did not take any action, which compelled the complainant to approach the court.

4) On the basis of aforesaid complaint, the learned Judicial Magistrate, 1st Class, Vailoo, vide his order dated 25.03.2022 directed Officer Incharge of Police Station, Kokernag to register FIR and undertake fair investigation into the matter in the light of the allegations made in the application. Pursuant to the said order, the impugned FIR alleging commission of offences under Section 447, 354 and 506 of IPC came to be registered with Police Station, Kokernag.

5) The petitioners have challenged the impugned order passed by the learned Magistrate and the impugned FIR registered pursuant to the order of the learned Magistrate on the grounds that pursuant to the directions passed by the Division Bench of this Court in the case of **S. K. Bhalla v. State of J&K and others** (PIL No.119/2011), petitioner No.1, in his official capacity as Tehsildar, Kokernag, issued eviction notice dated 09.03.2022 to respondent No.3, who is acting as chairman of the trust, asking him to remove the encroachment. It has been submitted that pursuant to notice dated 09.03.2022, the officials of the office of

Tehsildar, Kokernag, visited the spot for retrieving the State land and removal of encroachment on 11.03.2022 but the same was resisted by the Incharge of the trust. Another notice dated 11.03.2022 came to be issued by Tehsildar seeking explanation from the chairman of the trust as to why obstruction is being caused in performance of official duties. It has been submitted that because the complainant caused multiple hindrances in effecting eviction pursuant to the judgment of the Division Bench of this Court, another eviction notice dated 25.03.2022 came to be issued against the complainant and he was given seven days' time to vacate the encroachment.

6) It has been submitted that on 31.03.2022, petitioner No.1 addressed a communication to the Deputy Commissioner, Anantnag, seeking assistance of the police personnel and senior revenue officials for demolition of illegally constructed buildings by the trust being run by the complainant. Another communication dated 06.04.2022 came to be issued by petitioner No.1 to SHO, P/S Kokernag bringing to his notice the directions of the Court passed in PIL No.119/2011.

7) It has been contended by the petitioners that the learned Magistrate, while issuing directions under Section 156(3) of the Cr. P. C, has not taken into account the fact

that the complainant had not complied with the provisions contained in Section 154(1) and 154(3) of the Cr. P. C, inasmuch as neither the SHO, P/S Kokernag nor the SSP concerned were approached by the complainant prior to filing of the application under Section 156(3) of Cr. P. C before the learned Magistrate. It has been further contended that the order passed by the learned Magistrate directing registration of FIR is mechanical in nature, inasmuch as no offence is made out against the petitioners even from a bare perusal of the contents of the application that was filed by the complainant before the learned Magistrate. It has been contended that the impugned FIR has been registered by the complainant only with a view to wreak vengeance upon the petitioners who were discharging their official functions and complying with the directions passed by the Division Bench. According to the petitioners lodging of impugned FIR on the part of the complainant is nothing but abuse of process of law.

8) The respondent-State in its reply to the petition has submitted that pursuant to the directions passed by the learned Magistrate the impugned FIR came to the registered. During investigation of the case, the statements of witnesses were recorded and communications issued by the revenue authorities with regard to demolition/eviction

drive were also obtained. It has been submitted that as per the revenue extracts obtained from the revenue authorities, the place of occurrence was found to be State land and, as such, the offence under Section 447 of IPC is not made out against the petitioners.

9) I have heard learned counsel for the parties and perused record of the case.

10) The first ground that has been urged by learned counsel for the petitioners for impugning the order of the learned Magistrate, whereby direction was issued to the police to register the FIR on the basis of the complaint made by respondent No.3, is that the learned Magistrate before passing such a direction has not ascertained as to whether the complainant had adhered to the provisions contained in Section 154(1) and 154(3) of the Cr. P. C. The issue that is required to be determined by this Court is as to whether the complainant had adhered to the provisions of Section 154(1) and 154(3) of the Cr. P. C prior to making the complaint before the learned Magistrate and if not, what would be its effect.

11) Section 154(1) of the Code mandates an officer incharge of the Police Station to reduce into writing every information relating to commission of a cognizable offence.

Sub section (2) of the Section 154 of the Code provides that a copy of such information shall be furnished to the informant free of cost. Sub section (3) provides that a person aggrieved by refusal on the part of the officer incharge of a Police Station to record information as referred to in sub section (1), has the option of sending the substance of such information in writing and by post to Senior Superintendent of Police concerned and if the SSP is satisfied that the information discloses commission of a cognizable offence, he has to either investigate the case himself or direct investigation to be made by a subordinate police officer. Sections 156(3) Cr. P. C. vests power with the Magistrate having jurisdiction under section 190 Cr. P. C. to direct investigation into a cognizable case and such direction has to be made to the Officer Incharge of the Police Station concerned.

12) The Supreme Court in the case of **Priyanka Shrivastava vs. U. P and others 2015(6) SCC 287**, emphasized the importance of adherence to the provisions contained in Section 154(1) and 154(3) of Cr. P. C before invoking jurisdiction of a Magistrate under Section 156(3) of the Cr. P. C. In this context, it would apt to refer to the following observations of the Supreme Court:

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating

> *criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.*

13) From the aforesaid observations of the Supreme Court in **Priyanka Shrivastava's case (supra)**, it is clear that in appropriate cases, a Magistrate would be well advised to verify the truth and he/she can also verify the veracity of the allegations. It is also clear that there has to be prior application under section 154(1) and 154(3) CrPC while filing an application under section 156(3) Cr. P. C. and a complainant has to clearly spell out both these aspects in his application and necessary documents to that effect have to be filed. The Court further held that the veracity of the deposition made by the complainant can also be verified by the Magistrate regard being had to the nature of the allegations of the case and that the learned Magistrate should also be aware of the delay in lodging of the FIR.

14) Adverting to the facts of the present case, the complainant, while making his complaint before the learned Judicial Magistrate, 1st Class, Vailoo, has pleaded in para (10) of the complaint that they had approached the police concerned to lodge an FIR against the accused but the accused are hand-in-glove with the police agency and the police agency has not taken any action till date. The

record of the learned Magistrate, which has been summoned, would reveal that the application of the complainant is supported by the affidavit of Qari Mohammad Ashraf, Chairman. In the application it is nowhere pleaded as to on which date and to which police authority the complainant had approached for lodging his grievance. The complainant has not placed on record along with his complaint any proof with regard to delivery of complaint with either Incharge of the police station concerned or with the SSP concerned. Even in the affidavit supporting the application there is no mention as to when and in what manner requirements of Section 154(1) and 154(3) of the Cr. P. C have been adhered to by the complainant.

15) In **Priyanka Shrivastava's** case (supra), it has been clearly held that the applications have to be supported by affidavits duly sworn by the applicant(s) and besides this, it should be indicated in the application that there has been prior application under Section 154(1) and 154(3) of Cr. P. C. The Court further made it clear that these aspects should be spelt out in the applicant and necessary documents to that effect should be filed. In the present case, neither the complainant has spelt out as to which police authority he had approached and on which date he had done so. He has

not placed on record any document to show that he had either approached the SHO concerned or the SSP concerned. Thus, it can safely be stated that the complainant, in the present case, has not adhered to the provisions of Section 154(1) and 154(3) of the Cr. P. C before approaching the learned Magistrate.

16) The Supreme Court in the case of **Babu Venkatesh and others vs State of Karnataka and anr** reported in **2022 LiveLaw(SC) 181** has held that prior to the filing of a petition under section 156 Cr. P. C there has to be an application under Section 154(1) and 154(3) of the Cr.P.C. and while directing registration of FIR, the Magistrate has to consider these aspects of the matter. Recently the Supreme Court has, in the case of **Ranjit Singh Bath and another v U. T of Chandigarh and another, Cr. Appeal No. 4313 of 2024 decided on 06.03.2025,** held that without adhering to the requirements of section 154(1) and 154(3) of the Cr.P.C, a Magistrate cannot direct registration of FIR under section 156(3) Cr.P.C as the same would be contrary to the binding decision in **Priyanka Shrivastava's** case(supra).

17) In the face of aforesaid legal position, it is clear that without adhering to the requirements of Section 154(1) and 154(3) of the Cr. P. C, a Magistrate cannot direct

registration of FIR under Section 156(3) of the Cr. P. C as the same would be contrary to the law laid down by the Supreme Court in **Priyanka Shrivastava's** case(supra). Therefore, the impugned order dated 25.03.2022 passed by the learned Judicial Magistrate 1st Class, Vailoo, is not sustainable in law. Consequently, the impugned FIR No.55/2022 is also not sustainable in law.

18) That apart, if we go through the contents of the complaint that was filed by respondent No.3 before the learned Magistrate, it is clearly indicated therein that the petitioners, who happen to be the Government officials of Revenue Department, were trying to evict them from the State land after declaration of ROSHNI Act as unconstitutional by the Division Bench of this court in **S. K. Bhalla v. State of J&K and others** (PIL No.119/2011). The petitioners have placed on record copies of eviction notices issued by the revenue authorities against the respondent trust, in which it is clearly spelt out that the trust is in possession of State land which is required to be retrieved pursuant to the directions of the Division Bench of this court in the aforesaid case.

19) Thus, even from the allegations made in the application filed by the complainant before the learned Magistrate, it is clear that the petitioners were acting in

pursuance of the judgment of the Division Bench of this court passed in **S. K. Bhalla's** case (supra). Section 78 of the IPC clearly provides that an act done in pursuance of judgment or order of a Court is not an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order. Thus, an act done by a person pursuant to the judgment of the Court cannot form basis for prosecuting such person as the same does not come within the definition of "offence" as contained in IPC.

20) I am conscious of the fact that Section 78 of IPC falls in the chapter relating to General Exceptions which can only be put up as a defence to the prosecution case but in a case where facts are clear, either from a bare perusal of the complaint lodged against a person or from the material collected by the Investigating Agency during investigation of the case, it may not be necessary to wait for the accused to lead evidence so as to bring his case within the purview of General Exceptions. If on the basis of the allegations made in the complaint, the case falls in General Exceptions, it can be stated that the action cannot be termed as an offence.

21) The Supreme Court has, in the case of **Bapu alias Gujraj Singh vs. State of Rajasthan**, (2007) 8 SCC 66, in the facts and circumstances of the said case held that even if the onus of proving unsoundness of mind is on the

accused but where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.

22) The High Court of Gujarat in the case of **A. K. Chaudhary & anr. V. State of Gujarat & Ors.,** 2006 Cri LJ 729, while dealing with a similar situation has taken the view that if on the basis of the allegations made in the complaint a case falls under the General Exceptions, it can be said that no offence is committed. In this regard, it would be apt to refer to the following observations made by the Court:

> *42. Further, in view of the observations made hereinabove that the F.I.R., and other material do not disclose a cognizable offence justifying the investigation by the police under Section 156(1) of the Code, it can be said that the present case would fall in Item No. 2 of the principles laid down at para 108 of the above decision of the Apex Court.*
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> *43. The contention of Mr. Jani, learned Counsel for the respondent- Complainant that in view of Section 105 of the Indian Evidence Act, providing burden upon the accused to prove that the case falls under the alleged exception under Sections 76, 79 or 80, the same cannot be considered by the Police while exercising power under Section 157(1) of Cr. P.C., nor by this Court, appears to be attractive, but on close scrutiny,*

considering the present facts and circumstances holds no water. If the facts alleged in the complaint does not refer to the case falling in the exceptional category, it may stand on different footing, but in a case where, even as per the allegations made in the complaint the action is in alleged purported exercise of the power or statutory duty, it is neither open to the police, nor to the Court to ignore the said aspect. As such, Section 105 of the Indian Evidence Act is to be considered at the stage of trial and, therefore, cannot be pressed in service at the stage when the police is to exercise the power of investigation or the Court is to consider the matter under Section 482 of Cr. P. C. In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching to the prima facie satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under IPC as per Chapter IV of IPC. If, on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence. However, if the Police finds that the allegations made in the complaint on its face value, if taken, may not fall in the category of general exception, as provided under IPC, it may further investigate into the matter, and after the investigation, if the case is found to be not falling into general exceptions, the Police may further proceed for investigation by interrogation, etc. Therefore, there is no substance in the contention raised that while proceeding for investigation of a complaint in respect to cognizable offence, the general exceptions are not at all to be considered by the Police. If such a contention is accepted, it would result into treating all the actions as offence, though otherwise are out of the category of offence in view of the general exceptions provided under IPC and such would also result into nullifying the effect of provisions of IPC providing for general exceptions. Even at the time of trial, merely because the accused is claiming his case in general exceptions, the prosecution is not discharged from the obligation of proving the case that the offence is committed. While filing charge-sheet the Police may be required to show in the

investigation that the offence is committed in spite of the general exceptions and at that stage the burden would be upon the accused to prove that it was really or genuinely a case falling under general exceptions. The reference may be made to the decision of the Apex Court in case of State of U.P. v. Ramswaroop reported in (1974) 4 SCC 764 . Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very Chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact. If an action is ex facie beyond the jurisdiction or the action is in inherent lack of jurisdiction, it may stand on a different footing and at that stage possibly the question may arise for proof by the accused that he bonafide believed that he is having such power for such purpose. In the present case there are no facts and circumstances concerning thereto and, therefore, no much discussion is required on the said aspect, leaving the question open, but it cannot be said that if the allegation made in the complaint makes out a case for general exception under Section 76, 79 and 80, the same cannot be considered by the Court or by the Police while proceedings for investigation in view of Section 105 of Indian Evidence Act and, therefore, the said contention of Mr. Jani cannot be accepted.

23) From the forgoing analysis of law on the subject, it is evident that once it is clearly discernible from the allegations made in the complaint that the act of the accused falls within the General Exceptions, there is no need to wait for submission of proof on behalf of the accused so as to bring his case within the purview of General Exceptions. The instant case is a classic example where the complainant in his complaint itself has admitted that the petitioners were acting pursuant to the abrogation

of ROSHNI Act, which means that they were acting pursuant to the judgment of the Division Bench of this Court in **S. K. Bhalla's** case (supra). Thus, on this ground also no offence is made out against the petitioners.

24) So far as the allegations levelled by the complainant against the petitioners with regard to outrating of modesty and hurling of abuses are concerned, the same are absolutely vague. No particulars have been given in the complaint as to against whom such offences were committed by the petitioners. On the basis of such omnibus and vague allegations made by the complainant against the petitioners, the petitioners cannot be subjected to prosecution. In fact, from the material on record , it appears that the complainant has, with a view to obstruct the petitioners from discharging their official functions pursuant to the directions of the Court, resorted to lodging of the impugned FIR so as to wreak vengeance upon them and to resist the eviction from the State land. Continuance of proceedings against the petitioners in these circumstances would not only discourage the public officials from discharging their lawful duties but it would also be detrimental to the rule of law. Thus, the instant case is a fit one where this Court should exercise its power under Section 482 of Cr. P. C to quash the criminal proceedings

against the petitioners so as to prevent abuse of process of law and to secure the ends of justice.

25) For the foregoing reasons, the petition is allowed and impugned order dated 25.03.2022 passed by the learned Judicial Magistrate, 1st Class, Vailoo, as well as the impugned FIR No.55/2022 registered pursuant thereto along with the proceedings emanating therefrom are quashed.

(Sanjay Dhar)
Judge

SRINAGAR
06.06.2025
"Bhat Altaf-Secy"

*Whether the **Judgement** is reportable:* ***Yes/No***