Serial No. 53

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM(M) No.756/2023
CrlM No. 1631/2023
CrlM No. 1462/2023

Reserved on: 18.08.2026
Pronounced on: 20.08.2026
Uploaded on: 20.08.2026
Operative part or full judgment: ***Full***

1. **Jaswant Singh**
S/O Bichater Singh
R/O Village Salehar,
Tehsil Bishnah, District Jammu.
2. Abhishek Singh
S/O Jaswant Singh
R/O village Salehar,
Tehsil Bishnah, District Jammu. …....Petitioners

Through: Mr. R S Kotwal, Advocate.

Vs.

1. **Anita Devi**
W/O Surjeet Singh
R/O Village Salehar
Tehsil Bishnah
District Jammu
2. UT of J&K through
Principal Secretary, Home Deptt.,
Civil Secretariat, Jammu
3. Station House Officer,
Police Station Arnia,
District Jammu.

….. Respondents

Through: Mr. Vishal Sadotra, Advocate for R-1.
Mr. P. D. Singh, Dy. AG for R-2&3.

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

JUDGMENT

1. Petitioners, through the medium of this petition, seek quashing/setting aside of the order dated 13.04.2023, passed under Section 156(3) of CrPC by learned Judicial Magistrate (Munsiff) Bishnah, directing SHO, P/S Arnia to

register an FIR against the petitioners on the basis of a complaint/application dated 20.01.2023, filed by respondent No.1-Anita Devi.

2. Petitioners have pleaded, in their petition, that the complainant-Anita Devi along with her husband Surjeet Singh committed criminal trespass into land measuring 4 kanals comprising of Survey No.636 situated in Revenue Village Salehar, Bishnah, owned by the petitioners on the basis of a Sale Deed registered on 22.12.2021 by Sub Registrar Jammu South, which was also mutated in favour of petitioner No.1 on 15.02.2022 and, on their complaint, FIR No. 7/2023 was registered against the complainant and her husband on 18.01.2023 at P/S Arnia for the commission of offences punishable U/Ss 447/427/504/506 IPC; that as a counterblast to the FIR registered against them, respondent No.1, moved an application on 27.01.2023, seeking direction to SHO, P/S Arnia, to register an FIR against the petitioners.

3. The learned Magistrate called for a report from the police, who submitted the same on 27.02.2023, which revealed that a report was recorded on the complaint of complainant-Anita Devi on 09.12.2022, however, no cognizable offence was made out as she on examination by the doctor was found to have received minor injuries, as such, offence under Section 323 IPC only was constituted, which was not cognizable by the police; that on 13.04.2023, the learned Magistrate passed the impugned order directing registration of an FIR against the petitioners. Aggrieved of the impugned order, the same was challenged through a Revision Petition before Principal Sessions Court Jammu, however, it is claimed that same was withdrawn by the petitioners, in view of judgment delivered by this court on 17.12.2020 in case titled 'Sat Pal Sharma V. Pawan Singh Rathore'.

4. The impugned order has been assailed on the grounds that the same has been erroneously passed against the petitioners on the same facts when already

complaint/report of the respondent-complainant had been recorded on 09.12.2022 by the police for taking action under law; that the learned Magistrate had exceeded jurisdiction vested in him under Section 156(3) CrPC, as the offence reported by the police was non cognizable, for which, process of law has been initiated by the police concerned; that dispute between the petitioners and respondents was of civil nature for which civil litigation was also pending in two civil courts, however, the respondent-complainant wants to harass the petitioners by filing false criminal cases and that the impugned order requires to be quashed to prevent the abuse of the process of court and to secure the ends of justice.

5. Pursuant to notice, respondent No.1-complainant filed objections, controverting the assertions made in the petition, asserting that the complaint filed before the learned Magistrate clearly revealed the cognizable offence and the police being hand in glove with the petitioners have reported about non cognizable offence under Section 323 IPC only; that the learned Magistrate has rightly directed for registration of the FIR under the ambit of law and has not exceeded jurisdiction in any manner. Admitting the pendency of civil litigation before the courts of learned Munsiff Bishnah, and learned City Judge Jammu, it was pleaded that it is well settled law that on the basis of civil litigation, criminal proceedings cannot be quashed and finally, it was prayed to reject this petition.

6. The official respondent No.2, in its reply/status report, has pleaded that the inherent powers of this court can be exercised sparingly, carefully and with caution and should not be resorted to as remedies of appeals and revision.

7. Mr. Kotwal, learned counsel for the petitioners argued that the complainant/respondent No.1 had moved an application on 27.01.2023, against the petitioners and the police, after conducting an enquiry, submitted a report dated 27.02.2023 that an offence under Section 323 IPC was made out on the basis of

the complaint, which is a non cognizable offence; that, thereafter, the learned Magistrate on a complaint lodged by the respondent-complainant vide impugned order dated 13.04.2023 directed SHO of the jurisdictional police station to register a case, whereas, the fact of the matter is that the police had already enquired into the matter and submitted a status report to the learned Magistrate that only a non cognizable offence under Section 323 IPC was made out, on the basis of the complaint lodged by the complainant and her medical examination report and that a permission shall be sought to file a complaint.

8. Mr. Kotwal further, vehemently, argued that the learned Magistrate directed the registration of the case under Section 156(3) CrPC, which is a provision to be invoked for registration of the case in cognizable offences, in a case, wherein the police had already after conducting an enquiry, reported that offence constituted was non cognizable under Section 323 IPC; that the learned Magistrate, on the basis of the police report, should have passed orders, if any, in terms of Section 155 CrPC, dealing with non cognizable offences; that the learned Magistrate has committed grave illegality and the impugned order is, thus, liable to be set aside.

9. Learned counsel for the respondents, initially, making submissions that the police should have registered the case as the complainant had alleged the commission of offences under Section 325 IPC, which was cognizable and if at all after the investigation, the police could reach to this conclusion that the offence constituted was non cognizable as in case of offence under Section 323 IPC, the case could have been filed, for the commission of this offence and that there was no illegality committed by learned Magistrate while passing the impugned order, however, they reconciled to the scheme of the CrPC as contained under two different provisions of Sections 155 and 156 CrPC, dealing with non cognizable and cognizable offences, respectively.

10. Chapter XII of the Code of Criminal Procedure, 1973, deals with information to the police and their powers to investigate. Section 154 CrPC deals with information in cognizable cases, whereas Section 155 CrPC deals with non cognizable cases and investigation of such cases. Section 156 CrPC deals with police officers' powers to investigate cognizable cases.

11. The admitted facts, in the present case, are that the complainant/respondent No.1 had moved a complaint before the learned Magistrate Bishnah on 27.01.2023, against the petitioners alleging that on 09.12.2022 at about 1.45 PM, the petitioners, herein, deliberately and intentionally trespassed into her land and, on being objected, started to beat the complainant mercilessly with fists and blows and also used unparliamentary language; that she was examined at PHC Arnia, on 09.12.2022; that the complainant, on being assaulted, had suffered miscarriage of her unborn child and, as such, it was prayed that the police concerned be directed to register a case for investigation.

12. It appears that the police as directed had filed a report on 27.02.2023 before the learned Magistrate stating that on examination of the complainant by a doctor, she was found to have received minor injuries, as such, an offence under Section 323 IPC only was made out, regarding which, a complaint shall be lodged before the court after seeking permission.

13. The learned Magistrate vide impugned order dated 13.04.2023, observing that 'prima facie' the contents of the application do disclose commission of cognizable offences, directed, the jurisdictional police, to register an FIR in the case under the relevant provisions of law and report compliance forthwith. The learned Magistrate, in such a situation, was under an obligation before passing directions for registration of the case to take a view as to what was the offences constituted and as to what was the reason not to agree with the police report with

regard to the commission of a non cognizable offence. The complainant, had alleged that she suffered miscarriage, on being assaulted by the petitioners, and the Magistrate should have enquired into this aspect of the matter before directing the police concerned to register a case in a routine manner, that too, after a period of more than two months from the date of receipt of application.

14. The police is under an obligation to register a case for investigation in all those cases, which are cognizable, in terms of Section 154 CrPC, however, in the case of non cognizable cases, the police has to record the information and thereafter refer the informant to the Magistrate having jurisdiction. Sub Section (2) of Section 155 CrPC provides that the police officer is debarred from investigating a non cognizable offence without the orders of the Magistrate concerned. Once such an order is received by the police officer, he can exercise the same powers as he may exercise in a cognizable offence, except he cannot exercise the power of arrest without warrant. The learned Magistrate, on the basis of the complaint filed before him and the report filed by the police thereon, should have discussed in detail as to what could be the offence committed against the person of the complainant before a direction to the police concerned for investigation of the matter. The learned Magistrate had the option to ask for a report from the police concerned with regard to the non cognizable offence, whereupon, the investigation could have been ordered in terms of Section 155(2) CrPC, instead of Section 156(3) CrPC.

15. It is settled law that police officer cannot investigate non cognizable case without the permission of the Magistrate. At the cost of repetition, it is made clear that investigation into a non cognizable case cannot be undertaken without orders of a Magistrate, whereas, there is no such requirement in case of cognizable cases.

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16. Having regard to the facts and circumstances of the case and the legal position discussed hereinabove, this court is of the considered opinion that the impugned order passed by the learned Magistrate is not sustainable for the limited reason that the learned Magistrate has passed the direction for registration and investigation of the case, invoking the provisions of Section 156(3) CrPC, which is available in the cognizable cases, instead of the relevant provisions of law, under Section 155(2) CrPC to order investigation in a non cognizable case, or in the alternative not satisfied with the inquiry of the police, the learned Magistrate could have proceeded in the complaint itself and tried the same as a private complaint.

17. Viewed thus, the instant petition is ***allowed*** and the impugned order, being unsustainable, is set-aside and the matter is remanded back to the Trial Court for passing fresh orders, on receipt of the police report by taking a cumulative view of complaint and police report, of course, after affording an opportunity of being heard to both the sides. A copy of this order shall be forwarded to the learned Judicial Magistrate Bishnah, for compliance.

18. The petition is, accordingly, disposed of ***as allowed*** along with connected application(s).

(M.A Chowdhary)
Judge

Jammu:
20.08.2026
Raj kumar

Whether the order is speaking? Yes
Whether the order is reportable? Yes

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