

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

CRM(M) 66/2020

MOHAMMAD ASHRAF SHEIKH

...Appellant(s)/Petitioner(s)

Through: Mr. Shahbaz Sikander, Advocate

Vs.

GOVERNMENT OF J AND K THROUGH
COMMISSIONER SECRETARY TO
GOVERNMENT HOME DEPARTMENT
SRINAGAR/JAMMU

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
03.12.2025

The allegation in the complaint which was sought to be forwarded to police for registration of an FIR is that;

The petitioner is a business deal with apple fruit business having business relation with the private respondent no. 3 namely Mohammad Hussain who is that proprietor of the Hussin Fruit Agency Mul Chitragam Shopian.

That there have been transactions from the account of the private respondent no. 3 into the account of the petitioner for the period 25.10.2019 to 22.11.2019.

That after settlement of accounts an amount of Rs. 1233000 was found outstanding from the private respondent no. 3 to the petitioner and the private respondent no. 3 issued two cheques in my favour bearing no. 905806 with an amount of Rs. 878000 and 905816 with an amount of Rs. 355000 dated 26.11.2019.

That the cheque bearing no., 905806 was cashed in my favour and the Rs. 878000 was deposited in my account. However, the cheque bearing no. 905816 with amount of Rs. 355000 was stopped owing to the fact that the payment has been stopped by drawer.

That the petitioner bonafidely approached the private respondent for settlement of accounts but he refused to pay the same. The petitioner approached a lawyer and issued a notice against the private respondent no. 3 under section 138 of Negotiable Instrument Act.

That to the utter shock of the petitioner the petitioner came to know that the private respondent has lodged an impugned FIR no.01/2020 against the petitioner under Section 392, 341 IPC in Police Station, Shopian.

That the Additional Special Mobile Magistrate Shopian without following the procedure and the laws governing the complaint/application under Section 156(3) issued direction to Station House Officer the Police Station, Shopian to investigate the matter which resulted in the registering of FIR against the petitioner.

As per the order impugned, it is shown that the complainant had approached the SHO, Police Station, Shopian as well as SSP, but nothing was done in that behalf, that is why the application was made to the Magistrate.

The order of the Trial Magistrate has been challenged on twin grounds, one that allegations contained in the application disclosed the dispute with regard to the commercial transaction and also that the Trial Magistrate has not applied its mind before forwarding the complaint to the police under Section 156(3) Cr.P.C as the complainant has failed to place on record the copy of the application which he alleged was made by him to the concerned SHO or to the SSP. It is being submitted by learned counsel for the petitioner that the guidelines given by the Supreme Court in a case titled *Priyanka Srivastava & Anr vs. State of U.P & Ors.* Para 27 of the Judgment is taken note of:

“...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. The 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 and the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavor 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 case 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.”

What is required in the view of the said Judgment before passing such an orders, is that Trial court should at least verify the veracity of allegation contained in the complaint. While going through the complaint which has

been forwarded to the police under Section 156(3) Cr.P.C. for registration of an FIR, it is clear that there is some commercial dispute between the parties regarding the payment on account of Apple Fruit Business. That being so, Trial court ought to have taken due care and ought to have verified the allegations and ought to have passed the orders.

Order passed by the Trial Magistrate is not only is in violation of the Judgment passed by the Hon'ble Supreme court referred above, but also the allegations were with regard to some dispute with respect to the commercial transactions regarding the fruit business.

In view of the above, the petition is allowed and order is set aside and the FIR shall stand quashed.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
03.12.2025.
"Imtiyaz"

