

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
CRM(M) 237/2023

FAYAZ AHMAD GANIE

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

Through: Mr. Sheikh M. Saleem, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Jahingeer A Dar, GA

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

03.12.2025

Heard learned counsel for the parties and perused the record on file.

Petitioner has been prosecuted on the basis of report made with the police of Police Station Kupwara and on the basis of which FIR no. 128/2021 has been registered for the offence punishable under Section 188 of IPC.

The brief allegation against the accused was that he committed offence under Section 188 IPC by having violated the restrictions imposed for COVID, 2019 by the order passed by the District Magistrate.

Registration of FIR and presentation of challan has precisely been challenged on the ground that there had been no complaint on the basis of which cognizance would have been taken and FIR registered.

Whether the Trial court was competent to take cognizance or not, is to be seen in this case as there is no complaint filed by the authority whose orders are alleged to have been violated by the petitioner.

Section 195 Cr.P.C, reads as under:

“...195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-

(1) No Court shall take cognizance-

(a)(i) of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii). Of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i). of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Section 193 to 196 (both

inclusive), 199,200,205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause(i) or sub-clause(ii),

Except on the complaint in writing of that Court [or by such officer of the Court as that Court may authorize in writing in this behalf], or of some other Court to which that Court is subordinate.

(2). Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3). In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decree or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal court having ordinarily original civil jurisdiction within whose jurisdiction such Civil court is situate:

Provided that-

(a) Where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) Where appeals lie to a Civil and also to a Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue court according to the nature of the case or proceeding in connection with which the offences is alleged to have been committed."

As is clear from the FIR as well as Charge Sheet copy of which has been placed on record there had been no complaint filed by the District Magistrate who has passed orders under Section 144 Cr.P.C. and which could be said offence under Section 188 Cr. P. C.

It being so, cognizance taken by the Trial court as well as the Charge Sheet filed amounted to abuse of process of law. So, FIR along with the Charge Sheet stands quashed.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
03.12.2025.
"Imtiyaz"