

07
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 1286/2015

Ghulam Mohammad Mir and Anr.

..... Petitioner (s)

Through: None

V/s

State of JK and Ors.

..... Respondent(s)

Through: Ms. Nadiya Abdullah, Advocate.
Mr. Kaiser Ali, Advocate

Coram:

Hon'ble Mr. Justice Rahul Bharti, Judge.

JUDGEMENT

11-03-2025

1. Through the medium of this writ petition under article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, the two petitioners came forward claiming the relief as under;

“i) Certiorari directing the quashment of the investigation undertaken by the Crime Branch respondent No. 1 to 3 upon a complaint filed by respondent No. 4 before Chief Judicial Magistrate Srinagar which has been sent by him for investigation to Senior Superintendent of Police Crime Branch Srinagar while exercising powers under Section 156 (3) of the Criminal Procedure

code which has been subject matter of FIR No. 262 of 2009.

ii) Any other order or direction, which this Hon'ble Court deems proper, may also be passed in favour of the petitioners and against the respondent."

2. The institution of present petition is in the backdrop of FIR No. 262/2009 dated 15-10-2009 registered by the Police Station Parimpora, district Srinagar for alleged commission of offence under section 420 RPC registered at the instance of the respondent No. 4-Akhter Rashid Wani.
3. Said FIR No. 262/2009 resulted in generation and presentation of Final Police Report (Challan) No. 13/2010 presented for trial before the competent court of law. This fact is gatherable from annexure 3 page 21 of the writ petition. The challan was presented on 18-02-2010. In the said Police Report (challan) five(5) accused persons came to be booked for trial.
4. The two petitioners herein namely Gh Mohd Mir and Gh Nabi Mir do not array in the said challan No. 13/2010 read with FIR No. 262/2009.
5. The grievance which has lead the petitioners to approach this Court with the present petition is that the respondent No. 4-Akhtar Rashid Wani acting upon the same very set of facts

and allegations resorted to course of action by an application under Section 156(3) CrPC for booking six (6) persons named as accused and they figured in the following order of the said application;

- 1) Gh Mohd Malik
- 2) Gh Qadir Dar
- 3) Ab Rehman Thoker
- 4) Gh Mustafa
- 5) Gh Mohd Mir
- 6) Gh Nabi Mir

6. Thus the two petitioners herein figured at serial No. 5 and 6 in the said application made under section 156(3) CrPC by the respondent No. 4 Akhtar Rashid Wani.

7. The premise on which the application under section 156(3) CrPC came to be made by the respondent 4 for registration of an FIR against six(6) accused persons was that pursuant to direction of Deputy Commissioner Budgam, an inquiry report came to be submitted by an enquiry committee of three (3) revenue officials namely the Collector, Defence Land Acquisition Budgam, the Tehsildar Settlement Budgam and the Naib Tehsildar Soibugh. Report so submitted is bearing No. DCB/COLL(REF)72/SGR 880 dated 27-12-2012.

8. Said inquiry report came up with a purported outcome that respondent No. 4 by directly or indirectly paid an amount of 3,37,11,600-/- to the land owners and brokers and that the respondent No. 4 deserved possession of the land measuring 74 kanals at the rate of Rs. 4 lakh per kanal under Survey No. 12.
9. A bare perusal of the inquiry report would show that the same was not undertaken to examine as to whether any criminal culpability was involved at the end of the persons to whom the respondent No. 4 had volunteered the alleged payment of money for the alleged land deal.
10. It appears that in response to the application under section 156(3) CrPC so filed by respondent No. 4 before the CJM Srinagar, the same resulted in court order on 03-09-2014 for the Crime Branch Srinagar to resort to an appropriate course of action under the Code of Criminal Procedure on the basis of which the Crime Branch initiated preliminary inquiry.
11. The Crime Branch Srinagar came to conduct a preliminary verification/inquiry on file No. 74/2014.
12. Aggrieved of this reference so made by the CJM Srinagar in response to the application so made by the respondent No. 4

in terms of an order dated 04-09-2014, out of six(6) named accused persons, four(4) persons namely Gh Mohd Malik, Gh Mustafa, Gh Qadir and Ab Rahim Thoker jointly made an application on file No. 31/N dated 09-04-2015 before the CJM Srinagar seeking recalling of the direction so given in terms of the order dated 03-09-2014 on the basis whereof the Crime Branch had purportedly undertaken preliminary investigation before registration of a FIR in the matter.

13. The petitioners did not join said four(4) accused persons, though similarly placed in the context of the application so made by the respondent No. 4 invoking under section 156(3) of Cr.PC.
14. Said application of four named accused persons on file No.31/N came to be rejected vide an order dated 15-06-2015 passed by the CJM Srinagar against which two sets of litigations came to be before this court, one the present petition OWP 1286/2015 filed by the two petitioners whereas other writ petition OWP 1381/2015 came to be filed by four(4) named accused persons whose application for recalling a direction given for registration of FIR was dismissed.

15. These two writ petitions had a converging situation borne out of same facts and circumstances without any distinction.
16. OWP No 1381/2015 came to be disposed of by a coordinate bench vide judgement dated 23-12-2022, thereby quashing the complaint/application so filed by the respondent No. 4-Akhter Rashid Wani under section 156(3) CrPC before the CJM Srinagar.
17. The outcome of the present writ petition cannot be in divergence to the outcome of the writ petition OWP No 1381/2015 and therefore, what has been challenged by four accused persons, who were petitioners in OWP No. 1381/2015, would serve the present two petitioners as well who were remaining two accused persons in the array of six(6) accused persons in the very said application under section 156(3) CrPC before the CJM Srinagar so made by the respondent No. 4.
18. Thus, the present writ petition is allowed to this effect that the application so made by the respondent No. 4 invoking section 156(3) CrPC on the premise of the inquiry report submitted before the Deputy Commissioner Budgam for the purpose of seeking registration of FIR against six(6) accused

persons which includes the petitioners herein as well, shall stands quashed.

19. Disposed of accordingly.

20. Copy of judgement passed in OWP 1381/2015 is taken on record.

SRINAGAR
11-03-2025
Sarvar



(Rahul Bharti)
Judge

