

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

CRM(M) 574/2024

ABDUL WAHID BHAT AND ORS.
Through: Mr. Wasim Shamus, Advocate

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

Vs.

REHANA RASOOL NEHVI AND ANR
Through: Mr. Faizan A Ganaie, Advocate

...Respondent(s)

CORAM:
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
27.05.2025

Through the medium of this petition, order passed by the court of learned Chief Judicial Magistrate, Srinagar (Trial Court) on 08.11.2021 is sought to be set aside and quashed. Petitioners also pray to quash order dated 01.08.2024 passed by 1st Additional Sessions Judge, Srinagar, in a revision filed by them.

The challenge is precisely thrown on the ground that Trial court has passed the order impugned without proper application of mind and without jurisdiction. Learned counsel for the petitioners submits that the complainants, respondents herein, without following the due procedure as mandated under Section 154 of Cr. PC, filed the complaint and the Magistrate without giving finding with regard to the fact as to whether any cognizable offence was disclosed in the complaint or not, directed registration of FIR. According to the counsel for the petitioners, passing of the order impugned is causing miscarriage of justice.

Mr. Faizan, learned counsel for the respondents, after going through the order impugned, has stated that registration of FIR was directed on the basis of the complaint and that reasons have been given in the order. However, he could not say as to whether the Trial court has given any finding regarding the commission of disclosure of cognizable offence. He submits that FIR has been directed to be registered to unearth and fix the responsibility in case criminal act is committed.

Perusal of order impugned reveals that an order dated 19.12.2020 was passed by court of 2nd Additional Munsiff (JMJC), Srinagar, in a petition under Domestic Violence Act, directing non-applicants, petitioners herein, not to dispossess applicants, respondents herein, from where they were putting up as on that date. It had been alleged by respondents in their application under Section 156 (3) Cr.P.C. before Trial Court that petitioners violated the order and did not comply it because they sold property in question, thereby petitioners put some other persons inside the room which was occupied by the respondents.

Had there been any violation of any of the orders as regards providing of shared accommodation, respondents ought to have approached the court which was seized of domestic violence matter for implementation and enforcement of its orders and not the Trial Court. Respondents made a complaint before Trial Court for registration of FIR vis-à-vis violation of an order passed under Section 12 of Domestic Violence Act.

Learned counsel for respondents, at this stage, has fairly conceded that registration of FIR ought not have been made nor the respondents ought to have made such a complaint. He submits that he would approach the court

which has passed the order under Section 12 of Domestic Violence Act for enforcement of the order.

Having regard to the submissions made by learned counsel for the parties and having taken into consideration that court of Chief Judicial Magistrate, Srinagar, without being satisfied or without giving any finding as to whether there was any commission of cognizable offence, directed registration of an FIR which is patently bad.

The net result is that this petition is **allowed** and orders impugned are set-aside. However, respondents shall be at liberty to approach the court concerned in the event there is violation of the order whereby the shared accommodation was given to them so as to seek necessary compliance thereof.

Disposed of as above along with connected CrIM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
27.05.2025
"Imtiyaz"