

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

**LPA 237/2025  
In [WP(C) 1186/2025]**

**Date of Pronouncement: 25.11.2025  
Uploaded on: 26.11.2025**

- 1. Dr. Noor Mohammad Bilal  
S/O: Ab Rehman**
  - 2. Dr. Shahnaz  
W/O: Dr. Noor Mohammad Bilal  
Both residents of Naseem Bagh,  
Habak, Hazratbal, Srinagar,  
Kashmir, J&K.**
- ...Appellant(s)**

Through: Mr. Mujeeb Andrabi, Advocate

**Vs.**

- 1. Union Territory of J&K through  
Principal Secretary to Government,  
Home Department, Civil Secretariat,  
Srinagar/Jammu.**
  - 2. Director General of Police (DGP),  
Union Territory of J&K, PHQ, Peer  
Bagh, Srinagar, Kashmir.**
  - 3. Sr. Superintendent of Police, (Sr.  
S.P) District Srinagar, Kashmir, U.T of  
J&K.**
  - 4. Sub Divisional Police Officer (SDPO),  
Hazratbal, Srinagar.**
- ...Respondent(s)**

Through: Mr. Mohd Younis Hafiz, Assisting Counsel

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

25.11.2025

**1.** This is an appeal under Clause 12 of the Letters Patent filed by the appellants to assail an order and judgment dated 8<sup>th</sup> July, 2025, passed by learned Single Judge of this Court ["the writ Court"] in WP(C) No. 1186/2025.

**2.** The writ petition filed before the writ Court was purportedly a petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023. What was challenged before the writ Court was an order dated 29<sup>th</sup> January, 2025 passed by the Chief Judicial Magistrate, Srinagar ["the trial Court"], whereby the protest petition filed by the appellants was dismissed on the ground that the investigation conducted by the Special Investigation Team (SIT) was satisfactory and no case was made out for further investigation in terms of Section 173 (8) Cr.P.C. The writ petition filed by the appellants was found devoid of any merit and the same was, accordingly, dismissed by the writ Court.

**3.** The fact that the petitioners themselves had sought the indulgence of the writ Court under Section 528 of the

Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023 and also that the order passed by the Chief Judicial Magistrate, Srinagar dated 29<sup>th</sup> January, 2025, was under the Code of Criminal Procedure, makes it evident that the jurisdiction which has been exercised by the writ Court is criminal in nature.

4. Learned counsel appearing for the respondents has raised the issue of maintainability of this intra-court appeal under Clause 12 of the Letters Patent.

5. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the impugned judgment has been passed by the writ Court in the exercise of jurisdiction which is criminal in nature and, therefore, intra-court appeal under Clause 12 of the Letters Patent is not maintainable.

6. There are numerous judgments of the Coordinate Benches of this Court setting the controversy at rest with regard to the maintainability of appeal arising from an order and judgment passed by the learned Single Judge passed in the exercise of criminal jurisdiction under Clause 12 of the Letters Patent, viz ***“(i) LPA No. 80/2020 titled “Shamshada Akhter Vs. Aijaz Parvaiz Shah” decided on 16<sup>th</sup> August, 2021, (ii) LPA No. 204/2023 titled “Khursheed Ahmad Chohan Vs. Union Territory of J&K***

**and Ors.” decided on 19<sup>th</sup> September, 2024 and (iii) LPA No. 154/2023 titled “Rohit Sharma Vs. Rukhsana Begum and Anr.”, decided on 04<sup>th</sup> December, 2023.**

7. From a reading of the aforesaid judgments, it is settled that an appeal under Clause 12 of the Letters Patent of this Court is not maintainable against an order or judgment passed by a learned Single Judge in exercise of criminal jurisdiction.

8. It is not disputed before us that in the instant case the jurisdiction which the writ Court has exercised is the criminal jurisdiction and, therefore, in view of the position of law settled in the aforementioned cases, the appeal under Clause 12 of the Letters Patent is not maintainable. We are aware of a subsequent development that has taken place in the case of **LPA No. 23/2018 in case titled “Dr. Sumit Sabarwal Vs. Dr. Om Parkash Gupta and Ors.”** in which a Division Bench of this Court has doubted the correctness of the judgment passed by a Coordinate Bench in Shamshada Akhter (*supra*) and has referred the matter to the larger Bench. A Full Bench of this Court is seized of the matter.

9. It is in this background, the learned counsel appearing for the appellant would submit that the consideration of this matter may be deferred till the decision

from the Full Bench comes. We are afraid that we cannot accept such submission. It is trite law that where a reference to a larger Bench on a question of law is pending adjudication, the position of law which is doubted by the Bench referring the matter to the larger Bench, must prevail. The pending review or reference does not make the existing judgments ineffective or non-binding. The judgment doubted by the referring Bench must be followed unless or until the larger Bench hearing reference overrules it.

**10.** In view of the aforesaid, we are of the considered opinion that this appeal under Clause 12 of the Letters Patent seeking to challenge a judgment passed by the learned Single Judge in the exercise of criminal jurisdiction is clearly not maintainable. This appeal is accordingly, *dismissed*.

**(SANJAY PARIHAR)**  
**JUDGE**

**(SANJEEV KUMAR)**  
**JUDGE**

**SRINAGAR:**

25.11.2025

"Mir Arif"

- (i) Whether the order is reportable? Yes/No.
- (ii) Whether the order is speaking? Yes/No.