

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: -CRM(M) No. 346/2022

c/w

CRM(M) No. 345/2022

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Pronounced on:- 03.03.2026

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**Union Territory of J&K Through SHO Police
Station, Reasi.**

.... Appellant(s)

Through: - Mr. Sumeet Bhatia, GA

V/s

**Mohd. Khan S/o Noor Ali
R/o Bambyal Tehsil Nagrota District, Jammu**

....Respondent(s)

**Through: - Mr. Faiz Ul Arif Fahmi, Advocate in
CRM(M) No. 346/2022**

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

1. Heard learned counsel for the parties and perused the record produced in all the three petitions. The petitioners were arrayed as accused in FIR No. 23/2020 of Police Station Arnas and FIR Nos. 13/2020, 74/2020 and 58/2020 of Police Station Reasi, wherein they were alleged to have committed offences punishable under Section 188 of the Indian Penal Code. Upon completion of investigation, challans came to be presented before the Court of Chief Judicial Magistrate, Reasi, who transferred the matters for trial to the Court of Additional Mobile Magistrate, Reasi. The Trial Court, vide orders dated 25.11.2020 and 01.12.2020, dismissed the

charge-sheets and discharged the accused on the ground that cognizance of an offence under Section 188 IPC could not be taken except in accordance with the mandate contained in Section 195 of the Code of Criminal Procedure, which requires that such cognizance can be taken only upon a complaint in writing by the public servant whose order is alleged to have been violated or by a public servant to whom he is administratively subordinate. Aggrieved thereof, the petitioners preferred revision petitions before the learned Sessions Court, Reasi, which too came to be dismissed on the ground that no complaint as contemplated under Section 195 Cr.P.C. had been filed by the concerned public servant and that cognizance could not be taken merely on the basis of a police report submitted after investigation pursuant to the registration of an FIR.

2. The petitioners have now invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C., contending that the impugned orders suffer from legal impropriety and that the sanction accorded by the District Magistrate/ADM, Reasi for launching prosecution ought to have been treated as sufficient compliance of the requirement of Section 195 Cr.P.C. Per contra, learned counsel for the respondent submitted that the sanction orders dated 11.07.2020 and 13.11.2020 merely grant permission to prosecute on the basis of the police report and do not constitute a complaint within the meaning of Section 195 of the Code, and therefore the Trial Court as well as the Revisional Court have rightly declined to proceed further in the matter.

3. Having considered the rival submissions and examined the record, it is necessary to notice that Section 188 IPC makes punishable the disobedience to an order duly promulgated by a public servant where such disobedience causes or tends to cause obstruction, annoyance or injury, or risk thereof, to any person lawfully employed, or danger to human life, health or safety. Though the offence is cognizable and triable by a Magistrate, the manner in which cognizance of such offence may be taken is specifically regulated by Section 195(1)(a)(i) Cr.P.C., which places a statutory bar upon the Court from taking cognizance of offences punishable under Sections 172 to 188 IPC except upon a complaint in writing of the public servant concerned or of a public servant to whom he is administratively subordinate. The provision begins with a non-obstante clause and therefore overrides the general power of the Court to take cognizance on a police report. The object behind the provision is to prevent frivolous or vexatious prosecutions and to ensure that the authority whose lawful order has allegedly been violated is the one who decides whether prosecution should be initiated.
4. The legal position in this regard is no longer res integra. In *Daulat Ram v. State of Punjab*, AIR 1962 SC 1206, the Supreme Court held that the requirement of a complaint by the concerned public servant under Section 195 Cr.P.C. is mandatory and that where the statute prescribes a particular mode for taking cognizance, the Court cannot assume jurisdiction in any other manner. The Supreme Court reiterated the same principle in *C. Muniappan v.*

State of Tamil Nadu, (2010) 9 SCC 567, holding that the bar contained in Section 195 Cr.P.C. is absolute and that prosecution for offences under Section 188 IPC cannot be initiated on the basis of a police report unless the complaint in writing contemplated under the provision is filed by the competent public servant. Similarly, in State of Karnataka v. Hema Reddy, (1981) 2 SCC 185, it was held that when the legislature has imposed a specific condition precedent for taking cognizance, such requirement must be strictly complied with and cannot be bypassed by resort to the general provisions of criminal law.

5. In the present case, the principal argument advanced by the petitioners is that once the police registered an FIR, conducted investigation and submitted a report under Section 173 Cr.P.C., and thereafter the District Magistrate granted sanction for prosecution, the requirement of Section 195 Cr.P.C. stood satisfied. This contention, however, cannot be accepted in view of the clear statutory scheme. The definition of “complaint” under Section 2(d) Cr.P.C. expressly excludes a police report, while a “police report” in terms of Section 2(r) Cr.P.C. means a report forwarded by a police officer to a Magistrate under Section 173(2) of the Code. Thus, a police report cannot be treated as a complaint within the meaning of Section 195 Cr.P.C. The Revisional Court has rightly observed that the cognizance contemplated under Section 195 has nothing to do with the FIR registered with regard to a cognizable offence, which the police may investigate under the Code. The Court has only to see whether a complaint has been filed before the

Magistrate by the concerned public servant or by his administrative superior alleging violation of the lawful order promulgated by him. In the absence of such complaint, the police report cannot satisfy the requirement of Section 195 Cr.P.C.

6. In the present case, the sanction accorded by the District Magistrate merely records satisfaction with the police report and grants approval for launching prosecution. The order does not disclose any independent complaint by the District Magistrate alleging that his authority has been violated or that the promulgated order has been disobeyed in a manner causing obstruction, annoyance, injury or danger to human life or safety. Had the sanction order itself contained such allegations constituting a complaint within the meaning of Section 195 Cr.P.C., the matter might have stood on a different footing. However, mere approval of prosecution based on the police investigation cannot be equated with the statutory complaint contemplated under Section 195 Cr.P.C.
7. A similar view has been taken by the High Court of Chhattisgarh in *State of Chhattisgarh v. Rikky Sahu and others*, Criminal Miscellaneous Petition No. 880 of 2020 decided on 14.07.2020, wherein it was held that cognizance of an offence under Section 188 IPC cannot be taken on the basis of a police report unless the complaint in writing is filed by the public servant concerned. The reasoning adopted therein fully supports the view taken by the Trial Court as well as by the Revisional Court in the present case.
8. In view of the statutory bar contained in Section 195 Cr.P.C. and the authoritative pronouncements of the Supreme Court referred to

above, this Court finds no illegality or perversity in the orders passed by the Trial Court as well as by the Revisional Court. The petitioners have failed to demonstrate that the requirement of a complaint by the competent public servant was satisfied in the present case. Consequently, the Magistrate was justified in declining to proceed with the charge-sheets filed on the basis of the police report.

9. For the foregoing reasons, this Court does not find any ground warranting interference in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Resultantly, all the three petitions are *dismissed*.

(Sanjay Parihar)
Judge

JAMMU
03.03.2026
Diksha

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes