

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 160/2016
CrIM No. 511/2021
IA No. 1/2016(1/2016)

Date of Pronouncement: 05.08.2026
Uploaded on :07.08.2026

01. Smt. Shakuntla Devi
W/o Sh. Nek Ram Dofara,
R/o House No. 601-A Talab Tillo
Jammu.
02. Vishal Dofara S/o Nek Ram Dofara,
R/o House No. 601-A Talab Tillo,
Jammu.
03. Vikas Dofara S/o Nek Ram Dofara,
R/o House No. 601-A Talab Tillo Jammu Appellant(s)/Petitioner(s)

Through: Mr. Anuj Dewan Raina, Advocate.

Vs

01. Nek Ram Dofara S/o Sh Thoru Ram
R/o 601-A Talab Tillo, Jammu.
A/P House No. 278 Mohalla Jatkatian,
Jammu.
02. Station Police House Officer,
Police Station Bakshi Nagar, Jammu. Respondent(s)

Through: None.

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

ORDER
05.08.2026

01. Through the medium of the present petition, the petitioners seek quashment of the order dated 10.03.2016 passed by the Court of City Judge (JMJC), Jammu “the trial court” in an application titled “*Nek Ram Dofara v. Shakuntla Devi*”, filed under Section 156(3) of the Code of Criminal Procedure, whereby the Court directed registration of an FIR for

offences punishable under Sections 420, 467, 468, 469, 471 and 34 of the Ranbir Penal Code (RPC).

02. The case set up by the petitioners is that the impugned order suffers from non-compliance with the mandatory requirements of Sections 154(1), 154(3) and 156 of the Code of Criminal Procedure and, being illegal and unsustainable in law, deserves to be quashed.
03. Briefly stated, respondent No. 1 is the husband of petitioner No. 1 and father of petitioner Nos. 2 and 3. Respondent No. 1 appears to have filed an application before the Court below, alleging therein that he had purchased a house bearing No. 601-A, situated at Talab Tillo, Jammu, which was let out to one Surinder Kumar on a rental basis. The said Surinder Kumar had agreed to pay rent to respondent No. 1; however, owing to certain disputes, proceedings under Section 8 of the J&K Houses and Shops Rent Control Act, 1966, came to be initiated for fixation of fair rent.
04. It appears that in the said proceedings, the present petitioners claimed that petitioner No. 1 is the legally wedded wife of the complainant and that the petitioner Nos. 2 and 3 are his legitimate sons. The complainant, however, alleged that certain documents relied upon by the petitioners in support of their claim were fabricated and that, under the garb of such documents, the petitioners had fraudulently attempted to grab his property bearing House No. 601-A, situated at Talab Tillo, Jammu. On the basis of these allegations, the complainant approached the trial Court by filing an application under Section 156(3) Cr.P.C. The trial Court, vide order dated 10.03.2016, directed that the application be forwarded to the SHO, Police

Station Bakshi Nagar, Jammu, for registration of an FIR against the petitioners.

05. Ld. counsel for the petitioners argued that the allegations levelled against the petitioners are wholly false and baseless. It was contended that petitioner No. 1 is the legally wedded wife of the complainant and petitioner Nos. 2 and 3 are his legitimate sons. According to the petitioners, their relationship with the complainant is duly reflected in the Permanent Resident Certificates (PRCs) issued by the competent Revenue Authorities. The school records of petitioner Nos. 2 and 3 also record them as the sons of the respondent-complainant. Reliance has further been placed upon the ration card, Voter Identity Cards, Aadhaar Cards and other relevant documents to substantiate their relationship with the complainant. He further argued that there was non-compliance with the requirements of Sections 154(1) and 154(3) Cr.P.C. before invoking the jurisdiction of the Magistrate under Section 156(3) Cr.P.C. and, therefore, the impugned order is unsustainable in the eyes of law.
06. Respondent No. 1 earlier stood served and Mr. Ajaz Chowdhary, Advocate, filed a Power of Attorney for respondent No. 1 and appeared on his behalf for the first time on 22.03.2022, thereafter has not been appearing in this matter. This Court, vide order dated 12.04.2016, stayed the operation of the impugned order dated 10.03.2016 passed by the trial Court.
07. Having heard learned counsel for the petitioner and upon perusal of the record, it is evident that the offences in respect of which registration of the FIR was sought were alleged to have been committed in terms of Ranbir

Penal Code, which was in force and applicable to the erstwhile State of Jammu and Kashmir at the relevant point of time. Likewise, the procedure governing registration of the FIR, investigation, inquiry and trial of such offences was regulated by the Jammu and Kashmir Code of Criminal Procedure. Section 156(3) thereof empowered a Magistrate, who was competent to take cognizance under Section 190 of the Code, to order an investigation into a cognizable offence. Section 156(3) of the Jammu and Kashmir Code of Criminal Procedure was *pari materia* with Section 156(3) of the Central Code of Criminal Procedure, 1973, which has since been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023.

08. Before exercising jurisdiction under Section 156(3) of the J&K Code of Criminal Procedure, the Magistrate is required to satisfy himself as to compliance with the statutory scheme governing the reporting of a cognizable offence to the police. Section 154(1) contemplated furnishing information relating to the commission of a cognizable offence to the officer-in-charge of the concerned Police Station. Section 154(3), in turn, provided a further remedy where the officer-in-charge of the Police Station refused or failed to act upon such information. In such an eventuality, the aggrieved person could send the substance of the information, in writing, to the Superintendent of Police concerned. If the Superintendent of Police was satisfied that the information disclosed the commission of a cognizable offence, he could either investigate the case himself or direct an investigation to be conducted by a police officer subordinate to him.

09. Thus, before taking recourse to the jurisdiction of the Magistrate under Section 156(3) Cr.P.C., the complainant was ordinarily required first to approach the officer-in-charge of the concerned Police Station under Section 154(1) and, upon failure or refusal on his part to register the FIR, to avail the remedy provided under Section 154(3) by approaching the Superintendent of Police. Judicial precedents have consistently emphasised compliance with these statutory requirements before the extraordinary jurisdiction under Section 156(3) is invoked.
10. In this regard, the Supreme Court of India in *Priyanka Srivastava and Another v. State of Uttar Pradesh and Others*, (2015) 6 SCC 287, considered the manner in which applications under Section 156(3) Cr.P.C. are required to be entertained and emphasised the necessity of prior recourse to Sections 154(1) and 154(3) Cr.P.C., besides requiring appropriate safeguards against casual or abusive invocation of the jurisdiction of the Magistrate. The relevant observations of the Supreme Court are reproduced hereunder: —

“In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the

person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

11. A perusal of the impugned order dated 10.03.2016 does not indicate that the Magistrate had satisfied himself that the complainant had complied with the requirements governing invocation of jurisdiction under Section 156(3) Cr.P.C., as enunciated in *supra*. There is no discussion in the impugned order regarding prior compliance with Sections 154(1) and 154(3) Cr.P.C., nor does the order record the satisfaction of the learned Magistrate on that aspect before directing registration of the FIR.
12. The trial Court, while passing the impugned order, observed that the averments contained in the complaint, read with the documents and material placed on record, prima facie disclosed serious allegations against the accused which required proper investigation. However, the record merely reveals an averment in paragraph 14 of the application that the complainant had approached Police Station, Bakshi Nagar. There is neither any finding nor any observation in the impugned order as to whether the complainant had, in fact, approached the officer-in-charge of the concerned Police Station in terms of Section 154(1) Cr.P.C. and thereafter availed the remedy under Section 154(3) Cr.P.C. Equally, there is nothing to demonstrate that the assertions made in this regard in the

application under Section 156(3) Cr.P.C. were supported by an affidavit, as contemplated in *Priyanka Srivastava*.

13. There is yet another aspect of the matter which cannot be lost sight of. From the material available on record, the petitioners appear to claim the status of family members of the complainant, petitioner No. 1 claiming to be his legally wedded wife and petitioner Nos. 2 and 3 claiming to be his sons, though disputes have arisen between them. During the course of arguments, it was pointed out that proceedings under Section 8 of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, are pending before the competent Rent Controller at Jammu. In those proceedings also, the present petitioners are stated to have moved an application asserting that, in case the complainant disputes the paternity of petitioner Nos. 2 and 3, they are willing to undergo DNA analysis for determination thereof. It has further been submitted that the complainant has not come forward to rebut the said assertion.
14. Be that as it may, the controversy regarding the relationship between the parties need not be conclusively determined in the present proceedings. What is material for the purposes of the present petition is that neither the impugned order nor the material placed on record demonstrates due compliance with the requirements contemplated under Sections 154(1) and 154(3) Cr.P.C. before the jurisdiction under Section 156(3) Cr.P.C. was invoked. The impugned order also does not record the requisite satisfaction of the learned Magistrate in this regard. Consequently, the exercise of jurisdiction suffers from a legal infirmity, having been

undertaken without adherence to the principles governing the exercise of power under Section 156(3) Cr.P.C.

15. No doubt, the complainant has levelled serious allegations attracting offences punishable under Sections 420, 467, 468, 469, 471 and 34 RPC and has sought registration of an FIR against the petitioners, who claim to be his wife and sons. The seriousness of the allegations, however, cannot dispense with compliance with the procedural safeguards governing the exercise of jurisdiction under Section 156(3) Cr.P.C. At the stage of considering an application under the said provision, the matter is at the pre-cognizance stage and the Magistrate, upon being satisfied that the allegations disclose commission of a cognizable offence, may direct investigation by the police. Such power, however, is not to be exercised mechanically and calls for due application of mind, particularly because a direction for registration of an FIR entails serious consequences for the persons against whom the allegations are levelled.
16. The need for circumspection assumes greater significance in the peculiar facts of the present case, where the complainant seeks initiation of criminal proceedings against persons who claim to be his wife and sons, while he disputes such relationship. An allegation by a father disputing the paternity of persons claiming to be his sons necessarily has serious consequences not only for the children concerned but also for the dignity and social standing of the woman claiming to be their mother and the legally wedded wife of the complainant. In such circumstances, the Magistrate was required to exercise the discretion vested in him with due care and circumspection before setting the criminal law into motion.

17. In the circumstances obtaining in the present case, instead of straightaway directing registration of an FIR, the trial Magistrate ought to have first satisfied himself regarding compliance with Sections 154(1) and 154(3) Cr.P.C. The Magistrate could also have called upon the complainant to place appropriate material on record, duly supported by an affidavit, demonstrating that he had first approached the officer-in-charge of the concerned Police Station under Section 154(1) Cr.P.C. and, upon failure of the police to act, had thereafter availed the remedy under Section 154(3) Cr.P.C. Depending upon the nature of the proceedings and the course adopted under the Code, the Magistrate could also have proceeded in accordance with the other enabling provisions of the Code for verification of the allegations. In the absence of satisfaction regarding these foundational requirements, the direction for registration of an FIR cannot be sustained.
18. Viewed thus, the impugned order dated 10.03.2016 does not reflect the requisite application of mind to the statutory requirements and the principles laid down by the apex court governing the exercise of jurisdiction under Section 156(3) Cr.P.C. The ld. Magistrate appears to have proceeded primarily on the seriousness of the allegations without first satisfying himself as to whether the complainant had exhausted the remedies contemplated under Sections 154(1) and 154(3) Cr.P.C. and whether the application fulfilled the procedural safeguards governing such a prayer. The impugned order, therefore, suffers from a legal infirmity warranting interference by this Court.

19. For the foregoing reasons, the present petition is allowed and the order dated 10.03.2016 passed by Id. City Judge (JMJC), Jammu, directing registration of an FIR against the petitioners is set aside. It is, however, made clear that setting aside of the impugned order shall not preclude the complainant-respondent no.1 from taking recourse to such remedy as may be available to him under law, subject to fulfilment of the requirements prescribed therefor. The petition stands disposed of in the above terms, along with all connected application(s).

(Sanjay Parihar)
Judge

Jammu
05.08.2026
Renu



Whether the order is speaking: Yes

Whether the order is reportable: Yes