

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: -CRM (M) No. 867/2023

Nissar Hussain

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

Through: - Mr. Irfan Khan, Advocate

V/s

Union Territory of J&K and another

.....Respondent(s)

Through: - Mr. Bhanu Jasrotia, GA
Mr. Shariq Mehmood, Advocate vice
Mr. K. S. Puri, Advocate for R-3 to 8

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

ORDER
27.02.2026

1. After hearing learned counsel for the parties and perusing the record, this Court is of the considered view that the impugned order dated 12.09.2023 passed by the Id. Sub-Judge Special Mobile Magistrate, Rajouri (the trial court) cannot be sustained in law.

2. At the outset, it is not in dispute that the occurrence allegedly took place on 02.07.2023 and that the petitioner claims to have approached the SHO concerned on the very same day. It is further borne out from record that the petitioner and one Jahangir Khan were medically examined on 02.07.2023 vide MLC Nos. 9408 and 9409 respectively, which prima facie substantiates that they had sustained injuries. The petitioner also approached the Senior Superintendent of Police, Rajouri, on 10.07.2023 when no action was taken by the SHO.

3. The learned Trial Court declined the prayer under Section 156(3) Cr.P.C. primarily on the ground of delay in filing the complaint before the Court. However, such approach is legally unsustainable.

4. The law relating to exercise of jurisdiction under Section 156(3) Cr.P.C. stands authoritatively laid down by the Hon'ble Supreme Court in ***Priyanka Srivastava v. State of U.P. (2015) 6 SCC 287***, wherein it has been held that though the power under Section 156(3) Cr.P.C. is wide, it must be exercised judiciously and after application of mind. The Court further held that ordinarily, before directing registration of FIR, the Magistrate should verify whether the complainant has approached the police authorities under Sections 154(1) and 154(3) Cr.P.C, and may even call for a report from the police to ascertain the factual position.

5. In the present case, once the petitioner had demonstrated that he had approached the SHO on the date of occurrence and thereafter the SSP, Rajouri, the learned Magistrate was required to follow the mandate of ***Priyanka Srivastava*** and obtain a report from the police agency before dismissing the application at the threshold. The summary rejection solely on the ground of delay, without examining whether prior remedies under Section 154 Cr.P.C. had been exhausted, reflects non-application of mind.

6. Further, in ***Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1***, the Constitution Bench of the Hon'ble Supreme Court held that registration of FIR is mandatory under Section 154 Cr.P.C. if the information discloses commission of a cognizable offence. A preliminary inquiry is permissible only in limited categories of cases and not in

situations involving serious allegations of assault resulting in injuries. Therefore, once allegations of assault with weapons causing grievous injuries were disclosed, the matter warranted proper inquiry by the investigating agency rather than summary dismissal.

7. It is also well settled that existence of a cross-case does not justify refusal to register or investigate a complaint. In *Nathi Lal v. State of U.P.*, **1990 Supp SCC 145**, the Hon'ble Supreme Court observed that where there are cross versions of the same incident, both cases should be investigated and tried independently and the truth must emerge upon appreciation of evidence. The mere pendency of a counter case under Section 307 RPC against the petitioner could not have been a ground to non-suit him at the threshold. Similarly, in *Sakari Vasu v. State of Uttar Pradesh*, **(2008) 2 SCC 409**, the Supreme Court held that Section 156(3) Cr.P.C. provides an effective remedy to a person aggrieved by police inaction and the Magistrate has ample power to direct registration and proper investigation.

8. In the case at hand, the medical examination conducted on the date of occurrence lends prima facie support to the petitioner's version. Whether the injuries were sustained in an offensive act or in self-defence is a matter which can only be ascertained after thorough investigation. At this stage, the Court was not required to weigh the evidence meticulously but only to examine whether a cognizable offence was disclosed.

9. The learned Trial Court, instead of adopting the course indicated in *Priyanka Srivastava* and calling for a police report, dismissed the petition

on the ground of delay without properly considering the explanation that the petitioner was himself in custody in a counter case and could approach the Court only after being enlarged on bail. Such approach has caused serious prejudice to the petitioner and amounts to failure to exercise jurisdiction vested in the Court.

10. Accordingly, the impugned order dated 12.09.2023 is set aside. The matter is remanded to the learned Magistrate to consider the application afresh in light of the law laid down in *Priyanka Srivastava, Lalita Kumari, Sakari Vasu, and Nathi Lal*, after obtaining an appropriate report from the concerned police authorities and thereafter passing a reasoned order strictly in accordance with law.

Ordered accordingly.

JAMMU
27.02.2026
Diksha

