

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 89/2024
CrIM(233/2024).

NISHAT AHMAD RATHER.

...Petitioner (s)

Through: Mr. Taha Khalil, Advocate.

VERSUS

SANA AFTAB.

...Respondent(s)

Through: None.

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

ORDER
22-07-2026

01. Petitioner, through the medium of the present petition, has challenged the complaint filed by the respondent/complainant against him alleging commission of offence under Section 323 IPC. Challenge has also been thrown to order dated 5th of April 2023 passed by the learned Judicial Magistrate 1st Class (City Munsiff), Srinagar (hereinafter referred to as the "trial Magistrate"), whereby cognizance of the offence has been taken and process has been issued against the petitioner.

02. Heard and considered.

03. It appears that the respondent/complainant filed a complaint before the learned trial Magistrate alleging therein that while she was driving her vehicle near Budshah Bridge, Srinagar, due to rain, her vehicle slipped by a few inches, which did not cause any harm either to the petitioner or to his vehicle, but the

petitioner started abusing the respondent/complainant and used derogatory language against her in the presence of several pedestrians, due to which the respondent/complainant suffered humiliation. It has further been alleged that the petitioner slapped the respondent/complainant, causing her pain, mental agony and swelling. According to the respondent/complainant, the entire incident was captured on CCTV footage. It has also been alleged that she had to undergo treatment at Bone and Joint Hospital, Srinagar.

04. The petitioner has challenged the impugned order passed by the trial Magistrate on the grounds no enquiry as contemplated under Section 202 CrPC was undertaken by the learned trial Magistrate before issuing process against the petitioner. This according to the petitioner was mandatory in view of the fact that petitioner admittedly resides beyond the territorial jurisdiction of the learned trial Magistrate.

05. A perusal of the complaint filed by the respondent/complainant against the petitioner reveals that the petitioner is a resident at Arigam, Bandipora, which falls beyond the territorial jurisdiction of the learned trial Magistrate. As per Section 202(1) of the CrPC, it is mandatory for a Magistrate to hold enquiry by himself or direct the investigation to be made by the Police Officer or through any other person in a case where the accused resides beyond the area in which the Magistrate exercise its jurisdiction.

06. In the instant case, no such enquiry has been conducted by the learned trial Magistrate before issuance of process against the petitioner. The impugned order, passed by the learned trial Magistrate is, therefore, cannot be sustained in law.

07. For the foregoing reasons, the present petition is allowed and the impugned order dated 5th of April 2023 passed by the learned Judicial Magistrate 1st Class (City Munsiff), Srinagar is set aside. The matter is remanded to the learned trial Magistrate with liberty to hold a preliminary enquiry in terms of Section 202 CrPC before proceeding further in the matter in accordance with law.

08. The petition, along with connected CrIm, stands *disposed* of.

09. A copy of this order be forwarded to the learned trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

SRINAGAR
22-07-2026
Showkat Khan

