

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

CRM(M) No. 354/2024 CrIM(1411/2024)
CrIM(1698/2024) CrIM(844/2024)

MALIK SAJAD AND ANR.

.....Petitioner(s)

Through: Mr.I.A.Parray, Advocate

V/s

TARIQ AHMAD KAKROO AND ORS. Respondent(s)

Through: Mr.Mir Suhail, Advocate with
Mr. Raja Jaffar Nazir, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

28.07.2026

1. The petitioners have challenged order dated 13.05.2024 passed by learned Special Mobile Magistrate Baramulla, whereby application of the petitioners for seeking de-sealing of attached property situated at Syed Colony Nishat Srinagar has been dismissed.
2. It seems that a complaint came to be filed by respondent No.1 herein against respondent No.4 before the learned trial Magistrate seeking his prosecution for commission of offence under Section 138 of Negotiable Instruments Act. It appears that when respondent No.4/accused did not appear before the trial

Magistrate despite issuance of non-bailable warrants against him, the Court issued proclamation under Section 87 Cr.P.C calling upon the accused/respondent no.4 to appear before it, but when he did not appear, the accused was declared as proclaimed offender. A direction was issued by the learned trial Court to Tehsildar Khanyar to furnish report with regard to movable and immovable property of accused. In compliance of the direction passed by the learned trial Court, the Tehsildar furnished report that land measuring 7 ½ marlas falling under survey No.700/44 min of Estate Nishat Bagh recorded as “Sarkar” is under the occupation of accused/respondent No.4 on which he has constructed a house. Thereafter the learned trial Magistrate issued an order under Section 83 of Cr.P.C, whereby the Tehsildar was directed to attach the said property pursuant where to the Tehsildar attached the said property.

3. The petitioners filed an application objecting to the attachment of the property by pleading that the attached property falls under survey No.975/46 and it belongs to them. According to the petitioners they have purchased the said property against a sale consideration of Rs.3,00,000/-(Rupees three lacs) by virtue of agreement to sell and they are in continuous possession of the property in question.

4. The learned trial Magistrate after considering the application of the petitioners rejected the same by virtue of impugned order dated 13.05.2024 by observing that the attached property falls in survey No.700/44 min and not under survey No.975/46. It has been observed that the application of the petitioners is without any merit.
5. The petitioners have challenged the impugned order passed by the learned trial Magistrate on the grounds that the attached property is owned and possessed by them which they have purchased from one Mansoor Ahmad Rather. It has been submitted that the petitioners are not parties to the complaint filed by respondent No.1 against respondent No.4, as such, they have nothing to do with the liability of respondent No.4/accused. It has been further contended that once it was made clear by the petitioners to the learned trial Magistrate that attached property falls in survey No.975/46 it was not open to the learned trial Magistrate to continue order of attachment.
6. I have heard learned counsel for the parties and perused the record of the case.
7. Learned counsel appearing for respondent No.1 has raised a preliminary objection with regard to maintainability of the petition on the ground that the petitioners have remedy of filing a civil suit for establishing their right in respect of the attached

property in terms of Section 84 (4) of Cr.P.C, as such, they cannot approach this Court to invoke its power under Section 482 of Cr.P.C.

8. In order to determine the merits of aforesaid objection raised by learned counsel for respondent No.1, It is necessary to have a look at the provisions contained in Section 84 of the Cr.P.C, which read as under:-

“84. Claims and objections to attachment.—

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under Section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under Section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of Section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in

dispute; but subject to the result of such suit, if any, the order shall be conclusive.

9. From a perusal of the aforesaid provisions it is clear that once the property is attached by the Magistrate by exercising his powers under Section 83 of Cr.P.C, any person other than the proclaimed person has right to file objection to the attachment of the property. Such objection has to be enquired into by the Court in which the objection is preferred. As per sub section (4) of Section 84 Cr.P.C, if objection or claim raised by a person has been disallowed in whole or in part, such party has a right to institute a suit to establish his right in respect of the attached property within a period of one year from the date of order. Thus, a person whose claim to the attached property has been disallowed by the Magistrate has remedy of filing a civil suit with a view to establish his right to the attached property.

10. In the instant case, the petitioners have filed the petition under Section 482 Cr.P.C challenging the impugned order passed by learned trial Magistrate in terms of Section 84 of Cr.P.C. They have not availed the appropriate remedy available to them and instead have rushed to this Court by invoking its jurisdiction under Section 482 Cr.P.C. It is a settled law that a litigant who has alternate and efficacious remedy available to him cannot invoke inherent power of the High Court.

11. For the fore going reasons, the petition is held to be not maintainable and is dismissed as such, leaving it open to the petitioners to avail the remedy available in terms of Section 84(4) of Cr.P.C.

(SANJAY DHAR)
JUDGE

SRINAGAR
28.07.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

