

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

CRM(M) 508/2024 CrIM(1163/2024)

ABDUL RASHID MIR AND ORS ...Petitioner(s)/appellant(s)

Through: Mr. Mir Umar, Advocate

Vs.

UNION TERRITORY OF JAMMU AND ...Respondent(s)
KASHMIR AND ANR

Through: Mr. Ilyas Nazir Laway, GA &
Mr. Mohammad Younis, Assisting Counsel

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
22-07-2026

1. The petitioners have challenged FIR No. 17/2024 dated 10.08.2024 for offences under sections 191(2), 74, 115(2) of Bharatiya Nyaya Sanhita, 2023 (BNS) registered with Police Station Women Cell, Anantnag.
2. As per the allegations made in the impugned FIR, on 09.08.2024, the petitioners/accused are alleged to have barged into the compound of the house of complainant, whereafter they gave a beating to her and also tore apart her clothes. It has been further alleged that the petitioners hurled abuses upon the complainant, as a result of which her modesty was outraged.
3. The petitioners have challenged the impugned FIR by pleading that there is a matrimonial dispute going on between respondent No. 2/complainant and petitioner No. 3, who happens to be her husband, and that respondent No. 2/complainant has already filed a petition under the provisions of Protection of Women from Domestic Violence Act (*hereinafter referred to as "DV Act"*) against the petitioners, which is pending before the Court of learned Judicial Magistrate 1st Class, Qazigund. It has been submitted that the petitioners have tried to reconcile the matter

and requested respondent No. 2 to live peacefully along with her husband, but she is not ready to do so. It has also been submitted that petitioner No. 5 has filed a complaint against respondent No. 2 and as a counterblast to the said complaint, she has lodged the impugned FIR. It has been further contended that offence under Section 74 of the BNS is not made out against the petitioners. According to learned counsel for the petitioners even if it is assumed that respondent No. 2 was assaulted by the petitioners, no intention to outrage her modesty can be attributed to them, having regard to the relationship between the parties. It has also been contended that it was incumbent upon the investigating agency to conduct a preliminary inquiry in terms of Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), as the offences alleged to have been committed by the petitioners are punishable with three years but less than seven years of imprisonment.

4. I have heard learned counsel for the parties. I have also gone through the material on record and the Case Diary which has been produced by ASI Khurshid Ahmed of Women Police Station, Anantnag.

5. A perusal of the Case Diary would reveal that, by the time investigation of the case was stayed by this Court, most of the investigation had been completed. It appears that statement of the complainant under Section 183 of the BNSS came to be recorded by the learned Magistrate on 20-08-2024. In her statement, the complainant has admitted that she happens to be the wife of the petitioner No. 3, and on 09.08.2024, the said petitioner, along with other petitioners, came to her house, she was pushed around, her shirt was torn apart, as a result of which she became naked, and her hair were also pulled by the petitioners.

6. There may be some merit in the submission of learned counsel for the petitioners that, having regard to the relationship between respondent

No. 2 and petitioner No. 3, as also the other petitioners, who happen to be the family members of petitioner No. 3, the intention to outrage the modesty of respondent No. 2 may not be attributable to them, but one thing is clear that respondent No. 2 has in no uncertain terms stated that she was pushed around, assaulted, and her hair were pulled by the petitioners. These allegations clearly disclose cognizable offences against the petitioners, as such, the impugned FIR cannot be quashed by this Court in exercise of its powers under Section 528 of BNSS.

7. Learned counsel for the petitioners has submitted that respondent No. 2 has already filed a petition under Section 12 of the Domestic Violence Act making similar allegations against the petitioners. It is correct that respondent No. 2 has filed petition under the provisions of DV Act against the petitioners but the same may not have any effect upon the investigation of the case because purpose of lodging FIR and filing proceedings under DV Act is distinct. While purpose of lodging an FIR is to set into motion criminal law with a view to punish an offender for the offence which he may have committed, the purpose of DV Act proceedings is to provide monetary compensation to a victim of domestic violence and to prevent any further domestic violence. It is only if an order passed in DV Act proceedings is violated by the respondent that it constitutes an offence under Section 31 of the said Act, which is a distinct offence. Therefore, the purpose of two legislations is entirely different, and it is permissible in law to proceed under criminal law against the husband and his relatives, and also proceed against them under the provisions of DV Act.

8. So far as the contention of learned counsel for the petitioners that preliminary inquiry under Section 173(3) of the BNSS was required to be made in the facts and circumstances of the present case is concerned, in this

context, it is to be noted that provisions contained in Section 173(3) are directory in nature. It appears from a perusal of the said provisions that preliminary inquiry in certain type of cases is desirable and it is within the discretion of the investigating agency to take resort to preliminary inquiry before registering FIR but the said provision is not mandatory in nature. In any case, now that investigation of the case has progressed substantially and the investigating agency has collected material on record which does *prima facie* suggest that petitioners are involved in commission of cognizable offences, it would be a futile exercise if respondent-investigating agency is again asked to undertake preliminary investigation at this stage.

9. For what has been discussed hereinbefore, I do not find any ground to interfere in the investigation which is being conducted by the respondent-investigating agency in the impugned FIR. The petition lacks merit and is **dismissed**, accordingly.

10. Interim order shall stand vacated.

11. Case Diary be returned to the learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

SRINAGAR
22-07-2026
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