

Serial No. 50
Regular Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 570/2023
CrIM(1317/2023).

FAROOQ AHMAD DAR AND ORS.

...Petitioner (s)

Through: Mr. Arafat Rashid, Advocate.

VERSUS

RIYAZ MAQBOOL DAR AND ANR.

Through: None.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER
10-08-2026

01. The petitioner has challenged order dated 18th of September 2023, passed by the learned Chief Judicial Magistrate, Handwara, whereby, on an application filed by the respondents seeking registration of FIR against the petitioners, a direction has been issued to the SHO, Police Station Handwara, to get the land mentioned in the application demarcated through the concerned agencies and to take healthy steps to prevent illegal extraction of minerals from the land in question.

02. Heard learned counsel for the petitioners and perused record of the case.

03. It is pertinent to mention here that none has appeared on behalf of the respondents to contest the present petition.

04. It appears that the respondents filed an application before the learned trial Magistrate alleging therein that they are owners of the land falling under Survey Nos. 620 and 610, situated at Shanoo, Tehsil Langate. It was alleged in the application that the petitioners are men of muscle and power and they are trying to forcibly extract sand and Bajri from the land in question. It was further alleged that, despite objections raised by the respondents, the petitioners are adamant to continue with the extraction of sand and Bajri from the said land. In the prayer clause, the respondents had sought registration of an FIR against the petitioners.

05. There are more than one reason on the basis of which the impugned order passed by the learned trial Magistrate deserves to be quashed.

06. Firstly, the allegations made in the application do not constitute commission of any cognizable offence whatsoever. It appears that the grievance of the respondents is that the petitioners are extracting Bajri and sand from the land belonging to them. It may be a case of encroachment upon the land by the petitioners, but unless it is pleaded in the complaint that the petitioners were trying to trespass upon the land of the respondents with an intent to commit an offence or to intimidate, insult or annoy the respondents, it cannot be stated that an offence of criminal trespass is made out. There are no such allegations in the complaint filed by the respondents before the learned trial Magistrate. Thus, it was not open to the learned trial Magistrate to issue any direction to the police on the basis of such allegations.

07. Yet another reason for setting aside the impugned order passed by the learned trial Magistrate is that, in the instant case, the procedure prescribed by

the Supreme Court in “*Priyanka Srivastava and Another v. State of Uttar Pradesh*”, (2015) 6 SCC 287, has not been followed by the respondents, inasmuch as they have not approached the SHO concerned or the SSP concerned before filing the application before the learned trial Magistrate. Therefore, the direction passed by the learned trial Magistrate to the police is in gross violation of the law laid down by the Supreme Court in the aforesaid judgment.

08. On both the aforesaid grounds, the impugned order passed by the learned trial Magistrate is liable to be set aside. Accordingly, the petition is *allowed* and the impugned order dated 18th of September 2023, passed by the learned Chief Judicial Magistrate, Handwara, is set aside.

09. Disposed of along with connected CrIM.

10. A copy of this order be sent to the learned Chief Judicial Magistrate, Handwara, as also to the SHO, Police Station Handwara, for information.

(Sanjay Dhar)
Judge

SRINAGAR
10-08-2026
Showkat Khan