

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

Reserved on: 17.08.2026

Pronounced on: 21.08.2026

Uploaded on: 21.08.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

CRM(M) No.687/2024

MUSHTAQ AHMAD MALIK

...PETITIONER(S)

Through: - Mr. Mohammad Younis Bhat, Advocate.

Vs.

UT OF J&K & ANOTHER

...RESPONDENT(S)

*Through: - Mr. Mohsin Qadiri, Sr. AAG, with
Mr. Mohammad Younis, Assisting Counsel, &
Mr. Muneeb Yousuf Wani, Assisting Counsel.*

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

JUDGMENT

1) The petitioner, through the medium of present petition, has invoked jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), seeking quashment of FIR No.08/2016 for offences under Section 420, 468 and 120-B RPC registered with Police Station, Crime Branch, Srinagar.

2) As per the impugned FIR, a written complaint was made by respondent No.2 (the complainant) before the Crime Branch, Kashmir, which was endorsed by the Chief Judicial Magistrate, Srinagar. In the complaint, it was alleged that

the petitioner, in league with one Fayaz Ahmad Kaloo, the then Patwari Nursing Garh, Batamaloo, had hatched a criminal conspiracy to grab a piece of land under Khasra No.642 and had made efforts to obtain building permission from Srinagar Municipal Corporation on the basis of fake and forged documents. A preliminary verification was conducted by the Crime Branch, whereafter the petitioner and Patwari Fayaz Ahmad Kaloo were found, *prima facie*, involved in the commission of fraud and forgery. Accordingly, the impugned FIR came to be registered.

3) The petitioner has challenged the impugned FIR on the ground that the Crime Branch has no competence or authority to conduct investigation into the offences alleged in the said FIR. It has further been contended that the land under Khasra No. 624 has been purchased by the petitioner by way of a registered sale deed and as per admitted case of the complainant, he is owner of land under Khasra No.624. It has been submitted that the dispute between the petitioner and the complainant is purely of civil nature which relates to demarcation of the land and, in this regard, civil litigation is pending between the parties. It has also been contended that the essential ingredients of the offences for which the impugned FIR has been registered are not made out from a perusal of its contents.

4) Initially, investigation in the impugned FIR was stayed by this Court in the previous petition filed by the petitioner. However, the said petition was dismissed for non-prosecution and by the time the petitioner filed the present petition, substantial investigation had been conducted by the respondent investigating agency and it has filed the status report with regard to investigation of the case.

5) In the status report, it has been submitted that a communication was addressed to Tehsildar South, Srinagar, for providing the revenue records pertaining to land falling under Khasra Nos.624 and 642, situated at Haft-chinar Baranpathar, Batamaloo, Srinagar. Besides this, Tehsildar South was also requested to provide details regarding present posting of the then Tehsildar, Naib Tehsildar, Girdawar and Patwari. In response to the said communication, Tehsildar South, vide his communication dated 27.11.2024, furnished the revenue extracts, Jamabandi and Girdawari, along with other documents pertaining to the land falling under Khasra Nos.624 and 642. Upon perusal of the said revenue extracts, it was revealed that the land in question is Khalsa Sarkar/Baranpathar Garbandi measuring 03 kanals, 05 marlas and 185 sqft. under Survey No.642 in Estate Nursing Garh. Upon perusal of the Jamabandi extract, it surfaced that 1224 square feet

of land under Survey No.642 was transferred through a registered sale deed dated 19.11.2011 by Mst. Zaina in favour of the petitioner, conferring possessory rights upon him. It has further been submitted that the petitioner proposed to construct a house on a portion of this land measuring 01 marla and 104 square feet.

6) It has been further submitted that during investigation, it came to the fore that the then Patwari of Nursing Garh, Fayaz Ahmad Kaloo, was entrusted with the responsibility of verifying and rectifying the site plan prepared by the Draftsman so as to ensure its accuracy and adherence to the legal and revenue records. However, he deliberately and maliciously provided a false report to facilitate the building permission of the petitioner by knowingly endorsing incorrect information and suppressing the true status of the land under Khasra Nos.624 and 642. It has been submitted that the evidence collected during investigation establishes the malicious intention of the Patwari to deceive the authorities at the behest of the petitioner.

7) According to the investigating agency, the petitioner had wilfully and deceitfully manipulated the site plan of a parcel of land measuring 06 marlas under Survey No.624 of Estate Nursing Garh, though he was in possession of land under Survey No.642. It has been alleged that the petitioner

exploited the unavailability of Aqse Latha and misrepresented the plot belonging to the complainant as his own to the visiting officers, thereby misleading them with an intent to further his fraudulent activities. The co-accused, Fayaz Ahmad Kaloo, is stated to have died on 15.11.2020.

8) In short, the investigating agency has come to the conclusion, on the basis of the material collected during investigation, that the petitioner, who is the owner of land under Khasra No.642, in connivance with the revenue officials, projected land under Khasra No.624 as his own land instead of the land under Khasra No. 642 to the officials of the Srinagar Municipal Corporation. When this fraud came to the notice of the Commissioner, Srinagar Municipal Corporation, he stopped the process of granting permission.

9) It has further been submitted that during investigation it came to the fore that the petitioner had engaged a private Draftsman for preparation of site plan for construction of a double-storey residential house on a plot of land situated at Haft Chinar, behind Bindroo Medical Shop. The site plan was prepared by the Draftsman on the basis of the location identified by the petitioner, which, in fact, was the land falling under Survey No. 624 belonging to the complainant. Thus, according to the investigating agency, offences under

Sections 420, 511, 167, 471 and 120-B of RPC are, *prima facie*, made out against the petitioner.

10) I have heard learned counsel for the parties and perused record of the case. I have also gone through the case diary produced by the investigating agency.

11) The legal position with regard to scope of jurisdiction of the High Court under Section 528 of BNSS is well settled. It is only if the High Court finds that the allegations made in the FIR and the material collected by the investigating agency during investigation do not disclose commission of any cognizable offence that the FIR and the investigation can be quashed. However, if it is disclosed from a perusal of contents of the FIR and the material collected during investigation that a cognizable offence is made out, it would not be open to the High Court to exercise its powers under Section 528 of BNSS to quash the proceedings. It is equally well settled law that, while exercising its powers under Section 528 of BNSS, the High Court has to be circumspect and the said power has to be exercised sparingly only in exceptional cases.

12) Turning to the facts of the present case, it is alleged that the petitioner, who has actually purchased land under Khasra No.642, for the purpose of obtaining building

permission from the Srinagar Municipal Corporation, projected land under Khasra No.624 belonging to respondent No. 2, as the land owned and possessed by him. The investigating agency, during investigation of the case, has collected material which goes on to show that the petitioner engaged the services of a Draftsman and identified the location of the plot owned by him, which, in fact, belonged to respondent No.2. On the basis of the representation made by the petitioner, the Draftsman prepared the site plan in respect of the land belonging to respondent No. 2, which actually falls under Khasra No.624. There is also material on record to show that the then Patwari, Fayaz Ahmad Kaloo, at the behest of the petitioner, endorsed his report on the site plan projecting the proposed site of construction as one belonging to the petitioner, whereas the fact of the matter is that the proposed site of construction belonged to respondent No. 2. To support these assertions, the investigating agency has, during the course of investigation, collected material in the shape of reports of the Tehsildar concerned and has also recorded statements of witnesses. The material collected during investigation clearly support the allegations made in the impugned FIR.

13) It has come to the fore during investigation that the Patwari concerned prepared an incorrect document with an

intent to cause injury to respondent No. 2. Thus, offence under Section 167 of RPC is made out. Similarly, the petitioner, in order to deceive the authorities of Srinagar Municipal Corporation, presented an incorrect site map endorsed by the concerned Patwari along with his application seeking building permission. Thus, the offence of attempt to cheat the Municipal authorities is also made out in the present case. The said offence is a cognizable offence. Once it is concluded that the investigation conducted by the investigating agency has resulted in disclosure of cognizable offences, this Court would not be justified in exercising its jurisdiction under Section 528 BNSS to quash the proceedings.

14) It has also been contended by the petitioner that the Crime Branch does not have jurisdiction to undertake investigation in respect of the offences which are the subject matter of the impugned FIR.

15) In the above context, it is to be noted that, at the relevant time, SRO 202 dated 03.06.1999 was in force and Annexure to the said SRO provides the details of cases regarding which investigation could be undertaken by the Crime Branch. Entry (23) of the Annexure to the said SRO relates to cognizable offences committed by or relating to public servants.

16) In the present case, the subject matter of investigation relates to cognizable offences allegedly committed by the concerned Patwari concerned in league with the petitioner herein. Therefore, the Crime Branch does possess the jurisdiction to undertake investigation in respect of the offences disclosed by the impugned FIR. The contention of the petitioner in this regard is, therefore, without any substance.

17) For what has been discussed hereinabove, I do not find any merit in this petition. The same is dismissed accordingly. Interim order dated 18.11.2024 shall stand vacated.

18) Case Diary be returned to learned counsel for respondent No.1.



(Sanjay Dhar)
Judge

Srinagar

21.08.2026

“Bhat Altaf-Secretary”

*Whether the **Judgment** is speaking:*

YES

*Whether the **judgment** is reportable:*

YES/NO