

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

**CRM(M)/679/2023
CrIM/351/2024 CrIM/1556/2023**

Ashiq Hussain Mir

... Petitioner(s)

Through: -

Mr. Z. A. Qureshi, Senior Advocate with
Mr. Anurag Verma, Advocate.

V/s

Union Territory of J&K and Anr.

... Respondent(s)

Through: -

Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel &
Mr. Haris Khan, Advocate.

CORAM: HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(ORDER)

04.08.2026

(ORAL:)

01. The petitioner has thrown challenge to the order dated 17 October 2023, passed by the learned Additional Special Judge, Anti-Corruption Bureau, Srinagar [Trial Court] in the challan titled "*State (now UT) of J&K and vs. Ashiq Hussain Mir*" arising out of ACB-FIR-24/2019, whereby the plea raised by the petitioner-accused regarding the validity of the sanction was rejected.
02. Although the petitioner had questioned the legality of the impugned order on various grounds, during the course of arguments learned Senior counsel appearing for the petitioner restricted his submission only to the limited point that the Trial Court, while passing the impugned order, did not satisfy as to whether the sanctioning

authority was alive to and had taken into consideration the material on the basis of which the petitioner was arraigned, and had thus passed the sanction order. In order to buttress his arguments, it is contended that the Trial Court did not call for the relevant material, if any, that formed the basis for grant of sanction to prosecute the petitioner.

03. It is further contended that once the Trial Court has recorded its satisfaction that the sanction order was passed after taking into consideration the relevant material, such findings if allowed to stand, would have serious and deleterious consequences, inasmuch as same shall cause prejudice to the petitioner while questioning the validity of sanction order during the trial.

04. In rebuttal, learned Sr. AAG submits that the petition is not maintainable, as it is not a case of defective or total absence of sanction. Instead, the petitioner has sought to challenge the validity of the sanction order on the ground that the requisite material was not before the sanctioning authority while granting sanction for prosecution. This, according to the respondents, is a pure question of fact which the petitioner can establish during the trial.

05. Heard learned counsel for the parties.

06. From the plea raised on behalf of the petitioner, what is essentially discernible is that the right of the petitioner to question the validity of the sanction order has been taken away by virtue of the observations contained in the impugned order, and that, consequently, he may not be in a position to raise the said plea during the trial, thereby causing him grave prejudice.

07. In the given facts and circumstances, it is profitable to take note of the judgment of the Hon'ble Supreme Court in '**State vs. G. Eswaran AIR 2025 SC 1848**', wherein it has been categorically held that the validity of a sanction can always be examined during the course of the trial. Therefore, in view of the settled legal position, the petitioner is entitled to raise all pleas regarding the validity of the sanction order, including the question as to whether or not the competent authority had taken into consideration the relevant material to arrive at its satisfaction while granting the prosecution sanction. These are the matters that can always be raised and adjudicated during the trial.
08. It is trite law that where the ground taken is that the sanctioning authority failed to consider the relevant material while passing the sanction order, the same can be questioned during the trial. Merely by recording certain observations in the impugned order, the vested right of the petitioner to question such validity during the trial cannot be taken away. The petitioner remains well within his rights to question the validity of the sanction during the course of the trial itself.
09. Yet, on the touchstone of fundamental maxim of equity and justice that an act of the Court shall prejudice none (*Actus curiae neminem gravabit*), the impugned order, which is the subject matter of the instant petition, cannot be construed as an obstacle in the way of the petitioner to question the validity of the sanction order during the course of the trial.
10. For the foregoing reasons, it is deemed proper to preserve the right of the petitioner to question the validity of the sanction order during the course of the trial. Accordingly, without delving into the legality or

validity of the impugned order and particularly in order to advance the cause of justice, this petition is disposed of with the following directions:

- (i) The petitioner shall be well within his rights to question the validity of sanction order during the course of the trial; and
- (ii) The observations contained in the impugned order dated 17 October 2023 passed by the Trial Court shall, in no manner whatsoever, be construed as an obstacle or as binding upon the Trial Court, while examining the validity of the sanction, if and when the issue is raised during the trial. The Trial Court shall decide the said issue independently and uninfluenced by the observations recorded in the impugned order.

11. **Disposed** of, along with connected CrIMs.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR

August, 4th, 2026

Shoaib Javid