Serial No. 39
Regular List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) 533/2023
CrlM 1260/2023

ABDUL RASHID MAGREY.

…Petitioner(s)/Appellant(s)

Through: Mr. Bhat Fayaz, Advocate

VERSUS

MOHAMMAD FAROOQ MIR AND ORS.

…Respondent(s)

Through: Mr. Asif Nabi, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

ORDER

08.08.2025

1. Through the medium of the instant petition, the petitioner herein has invoked the inherent power of this Court enshrined in Section of 528 BNS for quashing complaint filed by the respondents 1 and 2 herein under Section 138 of the Negotiable instruments Act, 1881, against the petitioner herein besides challenging the order of cognizance and summoning dated 20.06.2019 passed by the Magistrate therein.

2. The case set up by the petitioner herein in the instant petition is that the complaint in question came to be filed by the contesting respondents against the petitioner and the proforma respondent herein without impleading the firm of the accused petitioner

herein, in that, the complainants in the complaint stated that the accused persons including the petitioner herein were running business in partnership thus rendering the complaint bad in law under Section 141 of the Act of 1881. It is further stated that the petitioner herein could not get information about the filing of the complaint or else the orders of cognizance and summoning orders passed by the Magistrate earlier and became aware recently about the same upon issuance of warrants against him (the petitioner herein) by the Court below.

Heard learned counsel for the parties and perused the record.

3. Perusal of the record of the Magistrate summoned earlier by this Court would reveals that the impugned complaint stands instituted before on 20th June 2019 where-after entertaining the same, the Court below took cognizance thereof and also summoned the accused persons therein. Further, perusal of the record of the proceedings of the Magistrate would also reveal that the accused 1 despite having acknowledged the said summon remained and on 31st July 2019, fresh summon was directed to be issued by the Magistrate to accused No. 2 requiring the complainant to furnish fresh particulars of the said accused 2 which came to be furnished on 07.12.2019 and

consequently the accused 2 was again summoned by the Magistrate. Further, perusal of the record of the said proceedings would tend to show that the Magistrate on 29th of December 2019 observed that the accused persons being absent and that the accused 1 as per the report received has absconded, thus directed issuance of warrants of arrest against the said accused 1 besides directing issuance of bailable warrants against accused 2.

4. Record of the Magistrate would further reveal that after 25th November 2020 no substantial proceedings had been conducted by the Trial Court on account of outbreak of Covid-19 Pandemic and on 27th August 2021, the Magistrate upon noticing that the accused persons have absconded and their whereabouts are not known after drawing satisfaction that they are deliberately evading the service of the summons inasmuch as the execution of warrants, the Magistrate thereafter directed summoning of the accused persons through publication of a notice in the local daily newspaper 'Srinagar Times', besides also requiring the complainant to obtain details of the movable and immovable properties of the accused persons from the concerned revenue authority.

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5. Further, perusal of the record of proceedings of the Magistrate would reveal that the Magistrate thereafter upon receipt of the report about the whereabouts of the accused persons as also their properties observed that the whereabouts of accused 1 are still unknown, and accused 2 is working as the Supervisor in NHPC Uri Baramulla, as a consequence whereof, directed SSP Baramulla, to effect the arrest of accused No. 2.
6. Perusal of the record of the Magistrate also reveals that on 21st of September 2022, the Magistrate while expressing displeasure about non-execution of warrants issued against the accused persons directed arrest of the accused persons by issuance of non-bailable warrants of arrest through intervention of Inspector General of Police , Kashmir, which non-bailable warrants set for execution through IG, Kashmir also did not yield any results qua secure the presence of the accused persons, whereafter the accused 1 petitioner herein filed the instant petition before this Court concealing all the aforesaid facts and got the proceedings before the Magistrate stayed in terms of order dated 13.10.2023 passed by this Court.
7. Keeping in mind the aforesaid facts inasmuch as the case set up by the accused petitioner herein in the instant petition, it is writ-

large manifest that the accused petitioner has abused the process of this Court as on one hand the accused-petitioner has evaded service of summon upon him as also the execution of warrant and on the other hand, has on facts sought the quashment of the complaint.

8. Having regard to the aforesaid position obtaining in the matter in general and the conduct of the accused-petitioner herein in particular, inasmuch as the principles of law laid down by the Apex Court governing and regulating the exercise of inherent power, this Court is of the considered opinion that the said inherent power is not warranted in the instant case.

9. The instant petition accordingly is dismissed and the Magistrate is directed to proceed ahead with the complaint in accordance with law.

10. Interim direction shall stand vacated.

11. Registry to send down a copy of this order to the Magistrate.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
08.08.2025
Sabreena