Serial No.15

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM(M) No. 58/2025
CrlM No. 103/2025

Date of pronouncement:- 03.11.2026
Uploaded on:- 12.11.2026

01. Prem Kumar S/o Late Sh. Des Raj …..Appellant(s)/Petitioner(s)
R/o Village & Post Office Bhoa,
Tehsil & District Pathankot, Punjab.

02. Ajay Sharma S/o Sh. Prem Kumar,
R/o Village & Post Office Bhoa,
Tehsil & District Pathankot, Punjab.

03. Taniya W/o Ankush Sharma,
R/o Village & Post Office Bhoa,
Tehsil & District Pathankot,
A/P Gurdaspur, Punjab.

04. Parveen Kumari W/o Sh. Bodh Raj,
R/o Village & Post Office Bhoa,
Tehsil & District Pathankot, Punjab.

Through: Mr. K.S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate.

vs

01. U.T of J&K through ….. Respondent(s)
Principal Secretary to Govt.
Home Department, Civil Secretariat, Jammu.

02. Senior Superintendent of Police, Jammu.

03. Station House Officer,
Police Station Women Cell,
Gandhi Nagar, Jammu.

04. Taruna Sharma, W/o Sh. Pankaj Sharma
D/o Sh. Satpal, R/o Village Barn, Tehsil
Bhalwal, District Jammu.

Through: Mr. Pawan Dev Singh, Dy. AG for R-1 to 3
Mr. Pawan Kumar Khajuria, Advocate for R-4.

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

ORDER

03.11.2026

01. Through the medium of the present petition, the petitioners seek quashment of order dated 09.01.2025 passed by the Judicial Magistrate First Class (Sub-Judge), Jammu, in a case titled ***"Taruna Sharma v. Pankaj Sharma & Ors.",*** whereby, while exercising jurisdiction under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS"), the Magistrate directed respondent No. 3 to register an FIR against the petitioners for the commission of offences punishable under Sections 354 and 498-A of the Indian Penal Code.

02. The facts necessary for adjudication of the controversy, as emerge from the record and the submissions advanced at the Bar, are that respondent No. 4 approached the Court of the Chief Judicial Magistrate, Jammu, by way of an application under Section 156(3) Cr.P.C. read with Section 175(3) BNSS, seeking registration of an FIR against the petitioners on allegations of cruelty, dowry demands, mental harassment and physical assault. The application was transferred to the Court of JMIC (Sub-Judge), Jammu, for disposal in accordance with law. On 12.07.2024, the Magistrate directed the Station House Officer, Police Station Women Cell, Jammu, to submit an action taken report.

03. The grievance projected by the petitioners is that, notwithstanding the action taken reports submitted by the police, which, according to them, did not substantiate the allegations levelled by respondent No. 4, the trial Magistrate proceeded to pass the impugned order dated 09.01.2025

directing registration of an FIR. It is contended that one of the reports specifically indicated that respondent No. 4 was unwilling to continue the matrimonial relationship with her husband, namely Pankaj Sharma, and was desirous of seeking dissolution of the marriage. The petitioners, who are stated to be the in-laws of respondent No. 4, contend that these material circumstances were altogether overlooked by the learned Magistrate while passing the impugned order.

04. At the outset, learned counsel appearing for the respondents raised a preliminary objection regarding the maintainability of the present petition. It was contended that an order directing registration of an FIR is interlocutory in nature and, therefore, does not warrant interference by this Court in exercise of its inherent jurisdiction, particularly when the FIR had not yet been registered. The objection was vehemently resisted by learned counsel for the petitioners, who submitted that even if the impugned order were to be treated as interlocutory, thereby excluding the remedy of revision, the inherent jurisdiction of this Court under Section 528 BNSS would nevertheless remain available to prevent abuse of the process of law and to secure the ends of justice.

05. Learned counsel for the petitioners, while assailing the impugned order on merits, submitted that there was no sufficient material before the learned Magistrate to justify a direction for registration of an FIR. It was urged that the preliminary enquiry undertaken by the police had not yielded any material substantiating the allegations against the petitioners and, more importantly, the enquiry itself had not reached its logical conclusion. In

such circumstances, it was argued, the learned Magistrate ought not to have directed registration of an FIR without awaiting the final enquiry report and examining the material collected during the course thereof.

06. Elaborating the submission, learned counsel invited the attention of this Court to Section 175(3) BNSS, which empowers a Magistrate, competent to take cognizance under Section 210, to order investigation after considering an application supported by an affidavit in terms of Section 173(4) BNSS, making such enquiry as may be considered necessary, and considering the submissions made by the police officer concerned.

07. It was submitted that the aforesaid provision contemplates an application of judicial mind before an order directing investigation is passed. According to learned counsel, once the learned Magistrate had considered it appropriate to call for an action taken report and the police had commenced an enquiry, judicial propriety demanded that the outcome of such enquiry be considered before issuing a direction for registration of an FIR. It was further contended that, had the learned Magistrate been satisfied at the threshold that the allegations disclosed commission of cognizable offences requiring investigation, an appropriate order could have been passed at that stage itself. However, having called for a report and permitted the enquiry to proceed, the learned Magistrate could not have disregarded the incomplete status of the enquiry without assigning cogent reasons.

08. *Per contra*, learned counsel appearing for the respondents submitted that the power conferred upon a Magistrate under Section 175(3) BNSS is not dependent upon the completion of a preliminary enquiry by the police. It

was argued that where the allegations disclose commission of cognizable offences, the Magistrate is competent to direct investigation and is not required to indefinitely await the outcome of an enquiry undertaken by the police agency.

09. I have heard the counsel for the parties at length and perused the record made available for consideration. Upon examining the rival submissions in the light of the statutory scheme and the material on record, this Court finds considerable substance in the contention advanced on behalf of the petitioners that the impugned order suffers from non-application of judicial mind.

10. It is well settled that the power exercisable by a Magistrate under Section 175(3) BNSS is a judicial power which must be exercised with due circumspection and upon consideration of the relevant material. A direction for registration of an FIR and investigation may entail serious consequences for the persons against whom allegations are made. The exercise of such power, therefore, cannot be reduced to a mere formality. The Magistrate is required to satisfy himself that the circumstances of the case warrant an order for investigation in accordance with law.

11. The jurisdiction exercised by a Magistrate under Section 175(3) BNSS is essentially at the pre-cognizance stage. At that stage, examination of the complainant on oath, as contemplated in proceedings upon taking cognizance of a complaint, is not a prerequisite. Nevertheless, the statutory requirements governing an application under Section 175(3), including compliance with Section 173(4) BNSS and consideration of the

submissions of the police officer concerned, are matters which cannot be overlooked. The discretion conferred upon the Magistrate must be exercised judiciously, having regard to the facts and circumstances of each case.

12. In the case at hand, the record reveals that the police agency, instead of immediately registering an FIR, had undertaken a preliminary enquiry into the allegations made by respondent No. 4. The dispute admittedly arose out of a matrimonial relationship. The permissibility of conducting a preliminary enquiry in matrimonial and family disputes has been recognised by the Hon'ble Supreme Court in ***Lalita Kumari v. Government of Uttar Pradesh & Ors.,*** (2014) 2 SCC 1, subject to the limitations and safeguards prescribed therein. It is equally well settled that the object of such preliminary enquiry is not to undertake a roving assessment of the truthfulness or otherwise of the allegations, but to ascertain whether the information received discloses commission of a cognizable offence.

13. What assumes significance in the present case is that the Magistrate had himself called for an action taken report from the police agency. Pursuant thereto, reports were submitted indicating that the enquiry was still in progress. The material placed before the learned Magistrate also disclosed that the dispute was matrimonial in nature and that respondent No. 4 had expressed her unwillingness to continue residing with her husband. Notwithstanding these circumstances, and without awaiting the final outcome of the enquiry or recording adequate reasons for dispensing with

the same, the learned Magistrate proceeded to direct registration of an FIR against the petitioners.

14. This Court is conscious of the legal position that completion of a preliminary enquiry is not, in every case, an indispensable condition precedent for exercise of jurisdiction under Section 175(3) BNSS. However, where the Magistrate has considered it necessary to seek a report from the police and the reports received indicate that the enquiry remains inconclusive, the Magistrate is expected to consider such material and assign reasons for proceeding further. In the present case, the impugned order does not disclose any meaningful consideration of the reports already submitted or the circumstances emerging therefrom. The direction for registration of an FIR, in the absence of such consideration, appears to have been issued mechanically.

15. It is pertinent to note that one of the reports submitted by the Police Station Women Cell recorded that respondent No. 4 was not inclined to resume cohabitation with her husband and had been advised to seek appropriate relief before the competent matrimonial Court. Although the mere desire of a spouse to seek dissolution of marriage does not, by itself, negate allegations constituting a criminal offence, the said circumstance, when read with the other material available on record, was relevant for consideration by the learned Magistrate. The impugned order, however, does not reflect that these aspects were examined in their proper perspective.

16. During the course of arguments, learned counsel for the respondents submitted that the learned Magistrate, while directing registration of an FIR, had also required the police agency to bear in mind the principles enunciated by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar & Anr.*** **as well as** ***Lalita Kumari v. Government of Uttar Pradesh & Ors.*** It was, therefore, contended that the petition was premature and that no prejudice could be said to have been caused to the petitioners at this stage.

17. The aforesaid submission does not commend acceptance. Once a competent Magistrate issues a positive direction for registration of an FIR under Section 175(3) BNSS, the police agency is bound to act in accordance with such direction. The police cannot treat the judicial order as a mere recommendation or sit in appeal over its correctness. A reference to the principles governing arrest or preliminary enquiry cannot substitute the independent satisfaction which the Magistrate is required to record before issuing such a direction. Consequently, the mere reference to the judgments in *Arnesh Kumar* and *Lalita Kumari* does not cure the infirmity arising from non-consideration of the relevant material.

18. Another aspect which merits consideration pertains to the territorial jurisdiction of the learned Magistrate. It was pointed out during the course of hearing that the allegations of physical assault, as noticed in the impugned order itself, related to incidents allegedly occurring at the matrimonial home of respondent No. 4 situated at Pathankot, Punjab. Learned counsel for the petitioners submitted that this material circumstance had been overlooked and that the learned Magistrate at

Jammu ought to have examined the question of territorial jurisdiction before issuing the impugned direction.

19. Learned counsel for the respondents, however, sought to justify the exercise of jurisdiction by contending that the allegations were not confined to an offence under Section 354 IPC but also disclosed cruelty punishable under Section 498-A IPC, the consequences of which, according to the respondents, continued beyond the matrimonial home. It was, therefore, submitted that the proceedings instituted at Jammu were legally maintainable.

20. The contention advanced on behalf of the respondents required consideration by the learned Magistrate in the light of the nature of the allegations, the places where the alleged acts were committed, and the applicable principles governing territorial jurisdiction. While the mere fact that an incident occurred outside the local limits of a particular police station or Court may not, by itself, constitute an absolute bar to registration or investigation of a cognizable offence, the question whether the alleged acts or their legally relevant consequences furnished a jurisdictional nexus with Jammu was a matter requiring judicial consideration. The impugned order does not disclose any examination of this aspect, despite the admitted location of the matrimonial home at Pathankot, Punjab.

21. The cumulative effect of the aforesaid circumstances leaves little room for doubt that the learned Magistrate failed to undertake the scrutiny expected of a judicial authority exercising powers under Section 175(3) BNSS. The reports already submitted by the police, the pendency of the preliminary

enquiry, the matrimonial background of the dispute and the question of territorial jurisdiction were all relevant considerations. The impugned order, however, does not demonstrate that these matters received due judicial attention before the direction for registration of an FIR was issued.

22. It needs to be emphasised that this Court is not expressing any opinion on the truthfulness or otherwise of the allegations levelled by respondent No. 4, nor is it holding that the complaint does not disclose commission of any cognizable offence. Those questions are required to be examined by the competent authority in accordance with law. The interference of this Court is confined to the legality and propriety of the decision-making process adopted by the learned Magistrate while passing the impugned order.

23. In view of the foregoing discussion, this Court is of the considered opinion that the order dated 09.01.2025 passed by the learned JMIC (Sub-Judge), Jammu, suffers from non-application of mind and cannot be sustained in law. The order appears to have been passed without adequate consideration of the material available on record and without awaiting or otherwise appropriately addressing the pending preliminary enquiry.

24. Accordingly, the present petition is allowed to the extent that the impugned order dated 09.01.2025 is set aside. The matter is remanded to the learned JMIC (Sub-Judge), Jammu, for fresh consideration in accordance with law. The learned Magistrate shall afford an opportunity of hearing to the complainant, call for and consider the detailed enquiry report from the police agency concerned, examine the relevant material including the question of territorial jurisdiction, and thereafter pass a fresh, reasoned

order uninfluenced by any observations made herein on the merits of the allegations.

25. The petition stands ***disposed of*** in the aforesaid terms.

(Sanjay Parihar)
Judge

Jammu
03.11.2026
Renu

Whether the order is speaking: Yes.
Whether the order is reportable: Yes.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH