Serial No. 175

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM (M) No. 874/2023

Date of pronouncement:- 17.11.2026
Uploaded on :-20.11.2026

01. Ripu Daman Sharma
S/o Late Sh. Manmohan Sharma
R/o 370-B Sector 7 Extension
Channi Himmat Jammu 180015.

02. Rajesh Sehgal S/o Sham Lal Sehgal
R/o H.No. 14, Sector 2 Ext Trikuta
Nagar, Jammu.

…..Appellant(s)/Petitioner(s)

Through: Mr. Sumir Pandita, Advocate.
Mr. Imran Ahmed Rather, Advocate.

vs

Jai Dev S/o Sh. Narayan Dass Kalra
R/o 102 A/D Gandhi Nagar, Jammu. ….. Respondent(s)

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Himanshu Beotra, Advocate.

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

ORDER
17.11.2026

01. The petitioners, by invoking the inherent jurisdiction of this Court, have called in question the legality and propriety of order dated 06.07.2023, passed by the learned Special Mobile Magistrate, 13th F.C. (Sub-Judge), Jammu, whereby, on an application filed by the respondent under Section 156(3) Cr.P.C., the Crime Branch was directed to register an FIR in the event the commission of a cognizable offence was disclosed and to proceed with the investigation in accordance with law. The principal grievance of the petitioners is that the impugned order came to be passed notwithstanding the pendency of an earlier complaint involving identical

allegations before another competent Magistrate, wherein an inquiry under Section 202 Cr.P.C. had already been ordered.

02. The facts necessary for adjudication of the controversy, shorn of unnecessary details, are that the respondent initially instituted a complaint on 28.05.2022 before the learned Special Excise Mobile Magistrate, Jammu, alleging commission of offences punishable under Sections 120-B, 403, 420 and 506 IPC against the petitioners. Upon consideration of the complaint and recording of the preliminary statements of the complainant and his witnesses, the learned Magistrate postponed issuance of process and directed an inquiry under Section 202 Cr.P.C. through the Crime Branch for ascertaining whether sufficient grounds existed for proceeding against the persons named in the complaint. The said inquiry was still pending when the respondent initiated the subsequent proceedings.

03. During the pendency of the aforesaid complaint, the respondent approached the learned Special Mobile Magistrate, 13th F.C. (Sub-Judge), Jammu, by filing an application under Section 156(3) Cr.P.C., seeking a direction to the Crime Branch for registration of an FIR against the petitioners on substantially the same allegations. The learned Magistrate called for an Action Taken Report from the Crime Branch, which, vide communication No. EOW/CBJ/Clt/2023/12448 dated 26.04.2023, informed the Court that the allegations were already under inquiry pursuant to the directions issued by the learned Special Excise Mobile Magistrate, Jammu. It was further reported that the matter had been brought to the notice of the superior authorities, who had directed the concerned Enquiry Officer to proceed in accordance with the directions of the Court already seized of the complaint.

04. Notwithstanding the aforesaid report, the learned Special Mobile Magistrate, vide order dated 06.07.2023, directed the Crime Branch to register an FIR if the commission of a cognizable offence was disclosed and to investigate the matter in accordance with law. Subsequently, upon being informed of the said order, the learned Special Excise Mobile Magistrate, Jammu, vide order dated 26.08.2023, stayed the proceedings in the earlier complaint. It is in this factual background that the petitioners have approached this Court seeking quashment of the order dated 06.07.2023.

05. Learned counsel appearing for the petitioners assailed the impugned order primarily on the ground that the learned Special Mobile Magistrate failed to appreciate that the respondent had already invoked the jurisdiction of a competent criminal Court on the same cause of action and that an inquiry under Section 202 Cr.P.C. was pending pursuant to the directions issued therein. It was contended that the Crime Branch had specifically apprised the learned Magistrate of the earlier proceedings, yet the application under Section 156(3) Cr.P.C. was entertained without due consideration of the implications of the pending inquiry. According to learned counsel, the respondent, instead of awaiting the outcome of the proceedings already initiated, resorted to a parallel remedy before another Court with the object of securing registration of an FIR. Such a course, it was urged, amounted to forum shopping and abuse of the process of law. It was further submitted that Section 210 Cr.P.C. could not be invoked to justify the institution of successive proceedings on identical allegations.

06. *Per contra*, learned counsel for the respondent supported the impugned order and contended that the mere pendency of an earlier complaint on the same set of facts did not constitute a legal bar to the registration of an FIR. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Kapil Agarwal & Ors. v. Sanjay Sharma & Ors.*, reported as 2021 Cri. L.R. (SC) 371, to contend that the Code of Criminal Procedure recognises the possibility of a complaint case and police investigation concerning the same offence proceeding simultaneously, subject to the procedure prescribed under Section 210 Cr.P.C. It was further submitted that the proceedings in the earlier complaint had already been stayed by the learned Special Excise Mobile Magistrate upon being informed of the subsequent direction for investigation and, therefore, no prejudice had been caused to the petitioners.

07. Learned counsel for the respondent also placed reliance upon *HDFC Securities Ltd. & Ors. v. State of Maharashtra & Anr.*, (2017) 1 SCC 640, to contend that an order directing investigation under Section 156(3) Cr.P.C. ordinarily does not warrant interference at the instance of a prospective accused at the pre-investigation stage. It was, accordingly, urged that the petition was premature and that no exceptional circumstances had been demonstrated to justify exercise of the inherent jurisdiction of this Court.

08. Heard learned counsel for the parties and perused the record. The controversy which falls for determination is whether, in the peculiar facts of the present case, the learned Special Mobile Magistrate was justified in directing investigation under Section 156(3) Cr.P.C., notwithstanding the

pendency of an earlier complaint involving identical allegations and an inquiry already ordered under Section 202 Cr.P.C., particularly when these circumstances had been specifically brought to the notice of the Court.

09. Before examining the legality of the impugned order, it would be appropriate to notice the distinction between the powers exercisable under Sections 156(3) and 202 Cr.P.C. Section 156(3) enables a Magistrate competent under Section 190 Cr.P.C. to direct police investigation at the pre-cognizance stage. Section 202, on the other hand, operates after cognizance has been taken upon a complaint and empowers the Magistrate to postpone issuance of process and either inquire into the case himself or direct an inquiry or investigation for the limited purpose of determining whether sufficient grounds exist for proceeding against the accused. Upon consideration of the material so collected, the Magistrate may dismiss the complaint under Section 203 Cr.P.C. or issue process under Section 204 Cr.P.C., as the circumstances may warrant. The two provisions, therefore, operate at different stages and serve distinct procedural purposes.

10. Section 210 Cr.P.C. deals with a different situation altogether. It provides that where, during the course of inquiry or trial in a complaint case, it is brought to the notice of the Magistrate that a police investigation is in progress in relation to the same offence, the Magistrate shall stay the proceedings and call for a report from the investigating police officer. The object of the provision is to regulate the simultaneous pendency of complaint proceedings and police investigation and to avoid conflicting or duplicative adjudication. It neither creates an absolute prohibition against registration of an FIR during the pendency of a complaint nor confers an

unrestricted right upon a complainant to invoke parallel criminal proceedings for an improper purpose. Equally, an inquiry or investigation directed under Section 202 Cr.P.C. cannot, merely because it is conducted through the police, be treated as an investigation under Chapter XII of the Code.

11. The legal position concerning the maintainability of a subsequent FIR on allegations already forming the subject matter of a complaint stands substantially clarified by the Hon'ble Supreme Court in *Kapil Agarwal & Ors. v. Sanjay Sharma & Ors.*, (2021) 5 SCC 524. In that case, an application under Section 156(3) Cr.P.C. had been treated by the Magistrate as a complaint case, while an FIR was subsequently registered on substantially the same allegations. The Hon'ble Supreme Court held that the mere pendency of an earlier complaint does not, by itself, prohibit registration of an FIR concerning the same facts. Significantly, however, the Court also recognised that where the subsequent criminal proceedings are found to constitute an abuse of the process of law or have been initiated with a view to harassing the accused, the High Court would be justified in exercising its extraordinary or inherent jurisdiction to quash such proceedings. The ultimate determination, therefore, depends not merely upon the identity of allegations but also upon the circumstances surrounding the initiation and continuation of the subsequent proceedings.

12. The aforesaid judgment, properly appreciated, does not advance an absolute proposition in favour of either party. While it negatives the contention that the pendency of an earlier complaint invariably bars a subsequent FIR, it equally recognises that the criminal process cannot be permitted to become

an instrument of harassment or undue pressure. The decisive consideration is whether the subsequent proceedings represent a legitimate invocation of the remedies available under law or, having regard to the attendant circumstances, constitute an abuse of the judicial process.

13. The judgment in *HDFC Securities Ltd. & Ors. v. State of Maharashtra & Anr.* (supra) also does not lay down an inflexible rule that every order passed under Section 156(3) Cr.P.C. is immune from judicial scrutiny. The Hon'ble Supreme Court, having regard to the stage of proceedings and the circumstances of that case, declined to interfere with the direction for investigation. The principle emerging therefrom is that the High Court should ordinarily be slow to interdict an investigation at its inception. However, where the exercise of jurisdiction itself is shown to be vitiated by a patent legal infirmity or where continuation of the proceedings would amount to an abuse of the process of Court, the inherent jurisdiction of the High Court remains available, subject to the settled limitations governing its exercise.

14. Reverting to the facts of the present case, it is not in dispute that the respondent had initially approached the learned Special Excise Mobile Magistrate, Jammu, seeking prosecution of the petitioners for offences punishable under Sections 120-B, 403, 420 and 506 IPC. The learned Magistrate, after recording preliminary evidence, had consciously adopted the procedure contemplated under Section 202 Cr.P.C. and directed an inquiry through the Crime Branch. The said proceedings had neither culminated in dismissal of the complaint nor resulted in issuance of process against the petitioners. The question whether sufficient grounds existed for

proceeding against them was, therefore, still awaiting judicial determination.

15. It is equally undisputed that, during the pendency of the said inquiry, the respondent approached another Magistrate seeking registration of an FIR on the same factual foundation. The Crime Branch, in its report dated 26.04.2023, had expressly disclosed the pendency of the earlier complaint and the inquiry being conducted pursuant to the directions of the learned Special Excise Mobile Magistrate. The learned Special Mobile Magistrate was, therefore, fully apprised that another competent criminal Court was already seized of the allegations forming the subject matter of the application under Section 156(3) Cr.P.C. These were material circumstances requiring consideration before any further direction for investigation could be issued.

16. The mere pendency of the earlier complaint would not, standing alone, have rendered the subsequent application legally incompetent. However, what assumes significance is that the respondent, having already invoked the jurisdiction of a competent Magistrate and obtained an order directing inquiry through the Crime Branch, approached another Court for substantially the same purpose without awaiting the outcome of the earlier proceedings. The impugned order does not disclose adequate consideration of the necessity for directing a separate investigation in the face of an existing judicial inquiry concerning the same transaction. The learned Magistrate was required to examine whether the subsequent application disclosed any circumstances warranting recourse to Section 156(3) Cr.P.C., notwithstanding the earlier proceedings. The absence of such consideration

assumes significance in determining the legality and propriety of the impugned order.

17. The sequence of events further reveals that, after securing the order dated 06.07.2023, the respondent brought the subsequent proceedings to the notice of the learned Special Excise Mobile Magistrate, whereupon the original complaint proceedings were stayed on 26.08.2023. The result was that the inquiry initially ordered under Section 202 Cr.P.C. remained inconclusive, while the subsequent proceedings initiated before another Magistrate became the operative basis for seeking police investigation. In the circumstances of the present case, such a course lends support to the inference that the respondent sought to secure through a second proceeding an investigative direction which had not been granted in the earlier complaint. The criminal process cannot be permitted to be employed in a manner that undermines the orderly progression of proceedings already pending before a competent Court.

18. The contention founded upon Section 210 Cr.P.C. does not cure the aforesaid infirmity. The said provision regulates the procedure to be followed when a complaint case and police investigation in relation to the same offence are simultaneously pending. It does not retrospectively validate an order passed under Section 156(3) Cr.P.C. without due consideration of the relevant material. Moreover, the order dated 26.08.2023, staying the earlier complaint proceedings, cannot by itself establish the legality of the preceding order dated 06.07.2023. The validity of the latter must be independently examined with reference to the circumstances existing when it was passed.

19. In *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court recognised the power of the High Court to intervene where criminal proceedings are manifestly attended with mala fides or are instituted with an ulterior motive, while emphasising that such jurisdiction must be exercised sparingly and with circumspection. The illustrative categories enumerated therein are not exhaustive, and the ultimate object of the jurisdiction is to prevent abuse of the process of law and secure the ends of justice. The principles enunciated in *Bhajan Lal*, read with the decision in *Kapil Agarwal*, make it clear that the existence of a legal remedy does not justify its invocation for an improper purpose or in circumstances where the criminal process is being misused.

20. Tested on the aforesaid principles, the subsequent proceedings initiated by the respondent cannot be viewed in isolation from the earlier complaint and the inquiry already pending before the learned Special Excise Mobile Magistrate. The respondent was aware of the earlier proceedings; the investigating agency had disclosed their pendency to the subsequent Magistrate; and the allegations in both proceedings arose out of the same transaction. Despite these circumstances, the impugned order was passed without adequately addressing the necessity or justification for directing a separate police investigation. The cumulative effect of these circumstances, rather than the mere existence of two proceedings, renders the impugned order vulnerable to interference.

21. This Court is, therefore, of the considered opinion that the learned Special Mobile Magistrate, 13th F.C. (Sub-Judge), Jammu, failed to exercise the discretion vested in him under Section 156(3) Cr.P.C. with the degree of

judicial application of mind required in the peculiar circumstances of the case. The subsequent proceedings, having been pursued notwithstanding the subsisting inquiry on identical allegations and without any sufficient justification emerging from the record for adopting such a course, constitute an abuse of the process of Court. Permitting the impugned order to operate in these circumstances would not advance the ends of justice, particularly when the original complaint remains pending and the competent Magistrate is yet to determine whether sufficient grounds exist for proceeding against the petitioners.

22. For the foregoing reasons, the instant petition is allowed**.** The impugned order dated 06.07.2023, passed by the learned Special Mobile Magistrate, 13th F.C. (Sub-Judge), Jammu, on the application under Section 156(3) Cr.P.C., is hereby quashed and set aside**.** Consequently, the proceedings arising out of the said application shall stand terminated. The order dated 26.08.2023, passed by the learned Special Excise Mobile Magistrate, Jammu, staying the proceedings in the original complaint, shall not stand in the way of the said Court proceeding with the complaint in accordance with law, the basis for such stay having ceased to exist.

23. The learned Special Excise Mobile Magistrate, Jammu, shall resume proceedings in the original complaint and proceed to consider the report of inquiry under Section 202 Cr.P.C., together with the other material available on record, and pass appropriate orders in accordance with law. It is clarified that nothing observed herein shall be construed as an expression of opinion on the merits of the allegations against the petitioners, which

shall be considered independently by the learned Magistrate, uninfluenced by the observations made in this judgment.

24. The petition stands ***disposed of*** in the aforesaid terms, along with all connected applications, if any.

(Sanjay Parihar)
Judge

Jammu
17.11.2026
Renu

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

HIGH COURT OF JAMMU & KASHMIR AND LADAKH