S. No. 8
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) No. 161/2023 in [WP(C) No. 785/2023]

Shameema And Ors. **…Petitioner/Appellant(s)**

Through: Mr. Ubaid Mir, Advocate

Vs.

Mst. Mehbooba Akhter **...Respondent(s)**

Through: None

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

ORDER
31.10.2026

1. Learned counsel for the petitioners submits that the order dated 01.10.2022, passed by the Trial Magistrate, suffers from patent illegality and non-application of mind. It is contended that the Magistrate, while taking cognizance of offences punishable under Sections 323 and 506 IPC against accused Nos. 1, 2, 4 and 5, has, in the same order, proceeded to dismiss the complaint qua accused Nos. 2 and 3. Despite having dismissed the complaint against accused No. 2, ld. Magistrate has simultaneously directed issuance of process against accused Nos. 1, 2, 4 and 5. It is, therefore, urged that the impugned order is inherently contradictory and cannot withstand judicial scrutiny.
2. Learned counsel further submits that, despite having been duly notified of the pendency of the present petition, the respondent has chosen not to appear and contest the same. It is argued that the impugned order, apart from being manifestly perverse, is bereft of reasons and reflects a complete failure on the part of the learned Magistrate to apply his judicial mind to the material available on record.

3. Having considered the submissions advanced by the counsel for the petitioners and perused the impugned order, this Court finds considerable substance in the contentions raised. A bare perusal of the order reveals that the ld. Magistrate, upon examining the allegations contained in the complaint, recorded a prima facie satisfaction regarding the commission of offences punishable under Sections 323 and 506 IPC and proceeded to take cognizance against, inter alia, accused No. 2. Curiously, in the very same order, the ld. Magistrate dismissed the complaint qua accused No. 2, yet proceeded to direct issuance of process against the said accused. Such mutually inconsistent directions, forming part of the same order, render the impugned order legally unsustainable.
4. The aforesaid contradictions are not merely procedural irregularities but go to the very root of the decision-making process. The impugned order ex facie reflects a lack of due application of judicial mind and appears to have been passed in undue haste, without proper consideration of the material on record. The ld. Magistrate was under an obligation to record a clear, consistent and reasoned satisfaction as to whether sufficient grounds existed for proceeding against each of the accused persons. The failure to do so has resulted in an order which is manifestly self-contradictory and suffers from material impropriety.
5. It is also pertinent to observe that the impugned order has been passed by the ld. Judicial Magistrate (Special Mobile Magistrate/Sub Judge), Anantnag, an officer holding the rank of Civil Judge (Senior Division). An officer of such judicial standing and experience is expected to exercise due care, circumspection and judicial diligence while passing orders affecting the rights and liabilities of the parties. The patent inconsistencies noticed in the impugned order are, therefore, particularly disquieting and ought to have been avoided.
6. Without expressing any opinion on the merits of the complaint or the culpability of any of the accused persons, this Court is of the considered view that the impugned order suffers from patent

inconsistency, non-application of mind and material impropriety, rendering interference by this Court warranted.

7. Accordingly, the present petition is **allowed**, and the order dated 01.10.2022, passed by the ld. Judicial Magistrate (Special Mobile Magistrate/Sub Judge), Anantnag, is hereby **set aside**. The matter is remanded to the ld. Magistrate for fresh consideration in accordance with law.
8. The Magistrate shall examine the material available on record, independently apply his judicial mind and pass a fresh, reasoned and speaking order, clearly specifying the decision qua each accused person. It is made clear that any observations made herein shall not be construed as an expression of opinion on the merits of the complaint.
9. The petition stands **disposed of** in the aforesaid terms. A copy of this order shall be transmitted to the learned Magistrate concerned for information and compliance.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:
31.10.2026
Akhil Dev