Serial No.05
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) No 888/2026
CrlM No. 2018/2026

Muzaffar Ahmad Malik. **…Appellant/Petitioner(s)**

Through: Mr. Yavar Ramzan, Advocate.

Vs.

Rafiqa Bano. **...Respondent(s)**

Through:

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

ORDER
27.10.2026

1. The petitioner has invoked the jurisdiction of this Court, essentially aggrieved by the pendency of a criminal complaint instituted by respondent Ms. Rafiqa Bano, alleging commission of offences punishable under Sections 74, 115, 126, 304, 329 and 351(3) of the Bharatiya Nyaya Sanhita, 2023 (for short, "BNS"). The said complaint is presently pending before the Court of City Judge, Srinagar, at the stage of consideration of the question of taking cognizance.
2. The principal grievance projected by learned counsel for the petitioner is that, notwithstanding the fact that the petitioner has brought to the notice of the learned Magistrate that the complaint is manifestly frivolous, vexatious and an abuse of the process of law, the proceedings have been adjourned repeatedly without any effective adjudication. It is further contended that the complainant has filed

written submissions which, according to the petitioner, are materially inconsistent with the allegations set out in the complaint itself.

3. Learned counsel has further submitted that the petitioner is a serving police officer and that the complainant has, on earlier occasions, been adversely commented upon by various authorities for allegedly resorting to the institution of frivolous complaints against him. On the strength of these submissions, it is urged that the continuation of the proceedings amounts to an unwarranted harassment of the petitioner and constitutes a misuse of the process of the Court.
4. Heard learned counsel for the petitioner at some length and perused the material placed on record. Having considered the submissions advanced and the documents annexed with the petition, this Court finds that the controversy, at its present stage, lies within a narrow compass.
5. The record reveals that the complaint in question was received by the Court of City Judge, Srinagar, upon its transfer from the Court of Chief Judicial Magistrate, Srinagar, on 09.09.2024, whereafter the same was duly diarised. The interim orders placed on record further disclose that, notwithstanding the passage of considerable time, the learned Magistrate has yet to pass a final order determining whether the complaint warrants taking of cognizance in accordance with law.
6. Significantly, the order dated 18.09.2024 indicates that the complainant had already placed her written arguments on record and that the matter was awaiting consideration for appropriate orders. It is also discernible from the record that the petitioner has participated in the proceedings before the learned Magistrate, although his stand is

that no formal notice was served upon him and that he acquired knowledge of the pendency of the complaint through a co-accused.

7. At this juncture, it would be apposite to advert to the statutory scheme governing the consideration of complaints under the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS"). Section 223 thereof contemplates the procedure to be followed by a Magistrate while considering a complaint, including examination of the complainant and the witnesses present, if any, on oath, subject to the exceptions engrafted in the provision. The proviso to sub-section (1) further incorporates the requirement of affording the accused an opportunity of being heard before cognizance is taken, in accordance with the statutory mandate.

8. The aforesaid provision, however, cannot be construed as conferring upon a proposed accused an unrestricted right to insist upon a detailed adjudication of the truthfulness or otherwise of the allegations at the threshold. The opportunity of hearing contemplated by the statute has to be understood in the context of the limited inquiry which the Magistrate is required to undertake at that stage. Such consideration is directed towards ascertaining whether the complaint, the statements recorded and the material available disclose sufficient grounds for proceeding in accordance with law. It is neither intended to assume the character of a trial nor to occasion a meticulous appreciation of evidence or a conclusive determination of disputed questions of fact.

9. Equally, Section 226 of the BNSS empowers the Magistrate to dismiss a complaint where, upon consideration of the statements on oath, if any, and the result of an inquiry or investigation, if

undertaken in accordance with law, no sufficient ground for proceeding is found to exist. The exercise of such jurisdiction necessarily entails application of judicial mind to the material before the Court and the recording of brief reasons in support of the conclusion reached.

10. Tested on the touchstone of the aforesaid statutory framework, this Court finds that the learned Magistrate has not, as yet, passed any order taking cognizance of the offences alleged in the complaint. The proceedings thus continue to remain at the pre-cognizance stage. In such circumstances, the challenge sought to be raised by the petitioner, insofar as it proceeds on the premise that he is being subjected to an unwarranted criminal prosecution, is plainly premature. The mere pendency of a complaint, without an order taking cognizance or otherwise proceeding against the proposed accused, does not, by itself, furnish sufficient justification for this Court to undertake a premature examination of the merits of the allegations.

11. The contentions raised on behalf of the petitioner regarding the alleged falsity of the accusations, the inconsistencies between the complaint and the written submissions of the complainant, and her purported conduct in initiating earlier proceedings are matters which, to the extent legally relevant and permissible, may receive consideration before the competent forum at the appropriate stage. This Court, in the exercise of its jurisdiction at the present juncture, would be loath to embark upon an assessment of such disputed assertions, particularly when the learned Magistrate has yet to take a decision on the foundational question of cognizance.

12. Be that as it may, there is another aspect of the matter which cannot escape judicial notice. The complaint has remained pending before the learned Magistrate since September 2024 without any final determination on the question of cognizance. The record does not disclose any satisfactory justification for such prolonged pendency, particularly when the matter appears to have been awaiting appropriate orders from an early stage of the proceedings. Judicial proceedings, even at the preliminary stage, cannot be permitted to remain in a state of indefinite uncertainty. The obligation to act with reasonable expedition is an integral facet of the fair administration of criminal justice.

13. It needs no reiteration that a Magistrate seized of a criminal complaint is under a statutory obligation to apply an independent judicial mind to the allegations and the material placed before the Court and to determine, in accordance with the procedure prescribed by law, whether the matter warrants further proceedings or whether the complaint deserves dismissal for want of sufficient grounds. Such determination must be made within a reasonable time and cannot be deferred indefinitely through successive adjournments.

14. In the considered opinion of this Court, therefore, while no case for interference with the complaint on its merits is made out at this premature stage, the circumstances do warrant issuance of an appropriate direction to the learned Magistrate to conclude the pending pre-cognizance proceedings expeditiously.

15. Accordingly, the learned City Judge, Srinagar, is directed to take up the complaint for consideration and, after ensuring compliance with the procedure and requirements prescribed under the BNSS, pass an

appropriate, reasoned and speaking order on the question of cognizance. The learned Magistrate shall independently examine the material available on record and determine whether the statutory requirements for taking cognizance are satisfied or whether the complaint is liable to be dismissed in terms of Section 226 of the BNSS, as the facts and circumstances of the case may warrant.

16. It is made clear that the opportunity of hearing contemplated under Section 223 of the BNSS shall be afforded in accordance with law, without permitting the proceedings at the pre-cognizance stage to be converted into a full-fledged trial or an elaborate adjudication of disputed questions of fact. The learned Magistrate shall remain mindful of the distinction between the formation of a judicial opinion as to the existence of sufficient grounds for proceeding and the ultimate determination of the guilt or innocence of the accused.

17. The learned Magistrate shall make every endeavour to conclude the aforesaid exercise expeditiously, preferably within a period of four weeks from the date a copy of this order is received, subject to compliance with all applicable statutory requirements. Unnecessary adjournments shall be eschewed, and the matter shall be dealt with the expedition which the nature and stage of the proceedings demand.

18. Needless to observe, this Court has not expressed any opinion on the merits of the allegations contained in the complaint or on the rival contentions advanced by the parties. The learned Magistrate shall be at liberty to pass such order as may be warranted in law, uninfluenced by any observation made herein, which shall be construed as confined exclusively to the question of the maintainability of the present challenge at this stage and the necessity of expeditious

disposal of the pending proceedings. It is further clarified that, in the event of any adverse order being passed against the petitioner, it shall be open to him to avail himself of such remedies as may be available under law, and all contentions in that regard are left open. For the foregoing reasons, the present petition is **dismissed as premature**, subject, however, to the directions issued hereinabove. There shall be no order as to costs.

19. Registry shall forward a copy of this order to the Court of City Judge, Srinagar, forthwith, for information and compliance.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
27.10.2026
"Shaista-PS"

HIGH COURT
JAMMU & KASHMIR AND LADAKH