Serial No. 65
Supplementary Cause List-I

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 933/2026
CrlM No. 2110/2026

Mir Rafiq Ahmad

… Petitioner(s)

Through: -
Mr. Vaseem Aslam, Advocate

V/s

Union Territory through Police Station Kothibagh and Ors

… Respondent(s)

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(ORDER)
03.11.2026

ORAL:

01. The petitioner has invoked the extraordinary jurisdiction of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking quashing of the charge sheet arising out of FIR No. 47/2018 registered at Police Station Kothibagh, Srinagar under Section 409, as also order dated 30.12.2021 passed by learned City Judge/Judicial Magistrate, Srinagar, in case titled *"State through P/S Kothibagh, Srinagar vs Mir Rafiq Ahmad & Ors"* whereby charge has been drawn up against the petitioner, including the order dated 12.02.2025 passed by learned Principal Sessions Judge, Srinagar in Criminal Revision No. 26/Cr. Rev. titled *"Mir Rafiq Ahmad vs Union Territory of J&K through Police Station Kothibagh, Srinagar"* confirming the order passed by the Judicial Magistrate, Srinagar.

02. Brief facts of the case are that the petitioner is the Secretary of M/s Esquire Pashmina and Raffal Handloom Weavers Industrial Cooperative Society Limited.

03. The Central Government, Ministry of Textiles, has sanctioned a project for development of Handloom Clusters at block level in the erstwhile State of Jammu and Kashmir, under the National Handloom Development Programme (NHDP). Accordingly, this project for Block Safakadal for its implementation was sanctioned in favour of the petitioner as its Implementing Agency (IA) against an amount of ₹.38.00 lakhs as first installment for grants-in-aid. However, the allegations are that the Implementing Agency, the petitioner, misappropriated the funds, that resulted in registration of an FIR and thereafter, on presentation of challan, the accused No. 1 (petitioner herein) was charged for commission of offence under Section 409 RPC.

04. The main plank of ground of challenge is that: First; there was no entrustment of the said amount by the respondents, as the same was transferred by the Development Commissioner for Handlooms, Ministry of Textiles, Government of India; Second; even if the allegations are taken at face value, no case is made out as in the sanction order itself, the consequences are contained, which include to refund the grant with interest thereon, including penal interest as applicable from time to time.

05. Heard learned counsel for the petitioner.

06. The impugned order dated 30.12.2021 whereby formal charges under Section 409 RPC was drawn up against the petitioner and confirmed in the revision by the Court of learned Principal Sessions Judge, Srinagar, vide order dated 12.02.2025, are based on a complete survey of facts and law. Whether ₹.38.00 lakhs or the bulk of it, was utilized for the sanctioned cluster purpose or was diverted/misappropriated for personal use is a pure question of fact. At the same time, the nature of the alleged withdrawals by the petitioner, including endorsed or un-endorsed cheques, transfers to the society's CC account, self/NEFT withdrawals, the

statements of the society members denying receipt, the bank statements, and the content and effect of the communication dated 04.06.2018, are all matters that require evidence and cross-examination.

07. The funds were a purpose-bound grant-in-aid released by the Development Commissioner for Handlooms, Ministry of Textiles, for development of handloom cluster at block level under National Handloom Development Corporation (NHDC).

08. Admittedly, the petitioner, as secretary of the Implementing Agency, had dominion over the funds in the society's account. The charge sheet and the trial court's order of 30.12.2021 record material, bank statements showing large un-endorsed withdrawals, statements of society members, residual balance that the courts below treated as constituting strong suspicion of dishonest misappropriation/conversion. At the charge-framing stage, the standard is low; strong suspicion founded on material is enough, and the court is not required to see whether the trial will end in conviction. The learned Sessions Judge correctly applied the law laid down in **"Akbar Hussain vs State of Jammu and Kashmir" (AIR 2018 SC 4314)**."

09. A commercial or grant transaction can still involve the offence of criminal breach of trust. The High Court does not conduct a mini trial or weigh evidence in exercise of jurisdiction under Section 528 of BNSS. Once the courts below have found strong suspicion sufficient to frame charge under Section 409 RPC, the proper forum for testing the defence, as to whether the funds were utilized for society purpose or towards personal enrichment, is for the trial court.

10. In so far as plea of learned counsel for the petitioner that the transaction is purely of civil nature and in the sanction letter itself the penalty clause is incorporated, therefore, the criminal proceeding cannot be initiated is without any legal force. Be it noted that the surety bond and Memorandum of Understanding entered into between the parties provide for refund with interest and arbitration, but that does not oust criminal

jurisdiction if the ingredients of criminal breach of trust are otherwise present. Civil and criminal law can run side by side; they are not mutually exclusive. A commercial or grant transaction can still involve the offense of criminal breach of trust. (**Priti Saraf v. State of NCT of Delhi, (2021) 16 SCC 142)**.

11. Learned counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in **Vandana Jain & Ors v. State of Uttar Pradesh & Ors, 2026 SCC OnLine SC 309; R.K. Dalmia & Ors. v. Delhi Administration, 1962 AIR (SC) 1821; State of Haryana & Ors. v. Ch. Bhajan Lal & Ors, 1992 AIR (SC) 604**.

12. These judgments are distinguishable in the given facts and circumstances of the case, as in the case on hand, there was not only entrustment to the petitioner as implementing agency of the project, but a specific amount of funds stood transferred in the account maintained by him for execution of said project. Once *prima facie* deviation is found, in that event, the petitioner cannot be heard to say that there was no entrustment or misappropriation, because this may constitute a valid defense and thus can be raised during trial.

13. Another plea also raised by learned counsel for the petitioner that since there was no privity of contract between the petitioner and the complainant, nor any entrustment was made by the respondents, therefore the complaint was lodged without any authority of law. This plea of the petitioner cannot be entertained and is liable to be rejected at the outset, because anyone may set the criminal law in motion, unless the statute indicates otherwise. There is nothing under the Criminal Procedural Code that only affected person should inform about the commission of offence. Rather if from any other independent source, it comes to the notice of the police agency that cognizance offence has been committed, it results in registration of FIR.

14. From the facts as adumbrated in the impugned orders, it appears that the allegations in the charge sheet, if taken at face value, disclose the ingredients of offence under Section 409 RPC. The questions

whether the funds were in fact misappropriated, whether there was dishonest intention, the validity and effect of the endorsement instructions, and the precise capacity in which the petitioner held the funds, are disputed questions of fact that require evidence and this cannot be gone into in the extraordinary jurisdiction of this Court.

15. For the foregoing reasons, it is held that the Courts below have applied the correct standards for framing of charge, as such, interference under Section 528 BNSS is not warranted. This petition is held to be without any merit and the same is accordingly, **dismissed**.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
November 3rd, 2026
"HAMID"

i. Whether the Order is Reportable? Yes/No
ii. Whether the Order is Speaking? Yes/No.

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Abdul Hamid Bhat
I attest to the accuracy and
authenticity of this
document