

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Case:- CRM(M) No. 174/2025
CM No. 382/2025

Jitendra Narayan Tyagi @ Syed Waseem Rizvi

.....Appellant(s)/Petitioner(s)

Through: Mr. Ankur Sharma, Advocate
(Through Virtual Mode)

Vs

UT of J&K & Anr.

.....Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(11.04.2025)

- 01.** Heard learned counsel for the petitioner through virtual mode.
- 02.** The petitioner has come up with the present petition thereby invoking inherent jurisdiction of this Court preserved under section 482 of the Code of Criminal Procedure, 1973 [now section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023] thereby seeking quashment of the very entertainment of a criminal complaint filed by the respondent No. 2-Danish Hassan Dar and taken cognizance by the court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar but also the

cognizance taking order with respect to the complaint so filed by the respondent No. 2.

- 03.** The respondent No. 2 filed the criminal complaint against the petitioner bearing allegations that the petitioner upon his conversion from 'Islam' to 'Hinduism' has made utterances denigrating 'Islam' as religion and also maligning the religious scripture of 'Islam' i.e. 'Quran'. In the complaint, the respondent No. 2 has contextualized as to what alleged offending manner the petitioner has presented 'Islam' as a religion and its 'Prophet Muhammad'.
- 04.** It is alleged in the complaint that the utterances of the petitioner, which came up in Public Domain through statements made to the newspapers and on the news channels, were objected and reprehended by various Ulmas and Muslim Bodies throughout the India.
- 05.** It is in this context that the respondent No. 2, as a complainant, in his complaint alleged that the acts of omission and commission on the part of the petitioner render him liable to face the prosecution under sections 153-A, 295-A, 298, 504 & 505 of the Indian Penal Code (IPC) but in the same breath averred in the complaint that *prima facie* the petitioner has committed offences under

sections 153-A, 295, 295-A, 504 & 505 of IPC leaving out section 298 IPC.

- 06.** The cause for the petitioner to file the complaint was actually for seeking registration of FIR and investigation of the matter by alleging that the respondent had first approached the Police Station concerned for the purpose of lodging FIR but the petitioner was not entertained leaving him to approach the Senior Superintendent of Police (SSP), Srinagar by sending complaint for registration of FIR through registered post but getting no response and, thus, lastly approaching the court of Chief Judicial Magistrate for seeking registration of FIR in the matter and investigation.
- 07.** Thus, from the tone and tenor of the complaint so filed, the respondent No. 2 did not intend to have a complaint taken cognizance by the court but instead solicited a direction unto the Police for registration of FIR.
- 08.** Upon institution of the complaint before the court of Chief Judicial Magistrate, the same came to be transferred and assigned to the Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar and the complaint was taken on file No. 131/2nd Addl. on 15.12.2021.
- 09.** From the material placed on record by the petitioner alongwith his petition, it is discernable that the court of Judicial Magistrate 1st Class (2nd Additional Munsiff),

Srinagar positioned itself in the manner as if that the respondent No. 2 was seeking cognizance of his complaint under section 190 read with section 200 of the Code of Criminal Procedure, 1973 whereas the fact of the matter is that the tone and tenor of the complaint is for a direction under section 156(3) of Code of Criminal Procedure, 1973 for registration of FIR.

- 10.** The court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar at its end, by virtue of an order dated 09.02.2022, acting *suo moto* initiated an enquiry purportedly ascertaining the truthfulness or otherwise of the matter in hand. This Court has borrowed the recital as set out by the court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar. In this regard, the respondent was directed to produce the evidence and other material before the court which resulted in examination of witnesses and also of the respondent which came to be verbatim reproduction of the contents of the complaint.
- 11.** Upon the purported enquiry, the court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar came to *prima facie* opinion that a case for cognizance is made out against the petitioner for commission of offences under sections 153-A, 295-A & 505 of Indian Penal Code and, therefore, directed issuance of process.

12. It is against this course and alleged action that the petitioner, feeling himself aggrieved, has approached this Court with the present petition.
13. Learned counsel for the petitioner has asserted that the Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar has mis-conducted the entire legal exercise being in sheer ignorance of the Code of Criminal Procedure, 1973 and also of the Indian Penal Code.
14. In this regard, the learned counsel for the petitioner submits that the offence under section 153-A IPC is figuring in Chapter-VIII which deals with Offences against the Public Tranquility. Section 295-A IPC figures in Chapter-XV which deals with Offences relating to Religion and section 505 IPC falls under Chapter XXII bearing heading “Criminal Intimidation, Insult and Annoyance”.
15. By reference to these Chapters of IPC, the learned counsel for the petitioner refers to section 196 of the Code of Criminal Procedure, 1973 falling in Chapter XIV which prescribes “Conditions requisite for initiation of Proceedings”.
16. Section 196 of the Code of Criminal Procedure, 1973 reads as under:-

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, 2 [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit 4 [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.”

- 17.** By reference to the section 196 of the Code of Criminal Procedure, 1973, learned counsel for the petitioner submits that the Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar has latched on to take cognizance of the complaint of the respondent No. 2 without bothering to have even an elementary reading of section 196 of the Code of Criminal Procedure, 1973 which mandates previous

sanction of the Central Government or of the State Government for facilitating cognizance of an offence under sections 153-A, 295-A & 505(1) of the Indian Penal Code, 1860.

- 18.** Learned counsel for the petitioner submits that there is a legislative purpose inhering in section 196 of Code of Criminal Procedure, 1973 in prescribing previous sanction of the Central Government/State Government/and/or of the District Magistrate concerned so as to set a safe reference in the institution of the criminal complaint alleging offences under the aforesaid sections so that the prior attention of the Central Government/State Government or the District Magistrate concerned is duly engaged to adjudge as to whether the offences of above description are amounting to creation of effects for which such offences have been created and warranting cognizance.

- 19.** *Prima facie* case is made out.

- 20.** The Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar in the cognizance taking order dated 09.02.2022 has not laboured to consult the Code of Criminal Procedure, 1973, as it was then obtaining and, thus, erred in taking the cognizance by by-passing the Central

Government's consent in the context of UT of Jammu & Kashmir.

21. Issue notice to the respondent No. 2 only.
22. Petitioner to furnish registered postal cover by or before 1st of May, 2025 before the learned Registrar Judicial, Srinagar, whereupon notice to go to respondent No. 2.
23. List on **07.07.2025**.
24. In the meantime, the proceedings in the case titled – *“Danish Hassar Dar vs Jitender Narayan Singh Tyagi”* before the court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar on file No. 131/2nd Addl. shall remain stayed.
25. Learned Registrar Judicial, Srinagar to send for the original record of the complaint from the court below.

(RAHUL BHARTI)
JUDGE

SRINAGAR
11.04.2025

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