

S. No.106
Suppl. 1

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No.389/2025

GHULAM MOHAMMAD PAYER

.....Petitioner(s)

Through: Mr.Tariq Ahmad Lone, Advocate.

V/s

AMANULLA KHAN

... ..Respondent(s)

Through : None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

11.07.2025

1. The petitioner through the medium of present petition has challenged complaint filed by the respondent against him for commission of offences under Section 420, 506 IPC which is stated to be pending before the Court of Judicial Magistrate 1st Class/Sub Judge, Kupwara (herein after referred to as “the trial Magistrate”).
2. As per the contents of the impugned complaint the petitioner represented himself to be a worker of BJP and in the month of May, 2020 he approached the respondent and asked for a list of his un-employed relatives assuring him that they would be appointed as Class IV employees in Central Government Departments under a scheme meant for the party workers. It is

further alleged in the impugned complaint that from May, 2020 to September, 2020, the respondents after collecting an amount of Rs.18,58,000/- (Rupees eighteen lacs and fifty eight thousand) from his relatives, handed over the same to the petitioner against proper receipt. The respondent is stated to have transferred further sum of Rs.20,000/- (Rupees twenty thousand) to the account of the petitioner. It is alleged in the complaint that even after lapse of two years, the petitioner/accused has not employed the respondent or any of his relatives and in this manner he has been duped by the petitioner.

3. It seems that the learned trial Magistrate, after recording preliminary evidence of the complainant, took cognizance of the offences and vide order dated 17.07.2023 issued process against the petitioner after drawing satisfaction that offences under Section 420, 506 IPC are prima facie made against the petitioner.

4. The petitioner has challenged the impugned complaint on the grounds that dispute between the parties is purely relating to the financial transaction which has been given a criminal colour by the respondent. It has been further contended that the allegations made in the impugned complaint do not constitute offence of cheating against the petitioner. It has also been contended that the respondent has not followed the procedure under Section 154 of Cr.P.C, inasmuch as he has filed the

complaint against the petitioner before learned Magistrate instead of approaching the police for registration of FIR. It has been further contended that it was incumbent upon the learned Magistrate to hold an inquiry in terms of Section 202 of Cr.P.C before issuing process against the petitioner. The learned counsel has, while relying upon judgment in **Lalita Kumari vs. Govt. of U.P.**, (2014) 2 SCC 1, contended that without holding the preliminary inquiry, the process could not have been issued against the petitioner. Lastly, it has been contended that learned trial Court while issuing process against the petitioner has not applied its mind and has acted in a mechanical manner. To support his contention the learned counsel has relied upon the judgments of the Supreme Court in the cases of **Anil Kumar vs. M.K.Aiyappa**, (2013) 10 SCC 705 and **Pepsi Food Ltd. and another vs. Special Judicial Magistrate and another**, (1998) 5 SCC 749.

5. I have heard learned counsel for the petitioner and perused record of the case.

6. If we have a look at the contents of the impugned complaint, it is clearly alleged by the complainant that under the pretext of providing Government job to the complainant and his relatives, the petitioner representing himself to be a worker of BJP, has collected a sum of Rs.18,58,000/- (Rupees eighteen lacs

and fifty eight thousand) from May 2020 to September 2020 and another sum of Rs.20,000/- (Rupees twenty thousand) through bank transfer. The specific allegation made in the complaint is that as promised, no appointment orders were handed over by the petitioner to the respondent/complainant or his relatives and when the respondent/complainant sought his money back from the petitioner, he threatened to kill him. These allegations *prima facie* show that the petitioner has made a false representation to the respondent and by adopting deception induced the respondent/complainant to deliver money to him. Thus, ingredients of offence under Section 420 IPC are clearly made out from allegations made in the complaint. The contention of the petitioner that it is purely a financial transaction between the petitioner and the respondent is wholly misconceived, because it is not a case of commercial transaction between the parties, but it is a case where the petitioner has allegedly practised deception and fraud upon the respondent/complainant and duped him of a huge amount of money. Therefore, contention of learned counsel for the petitioner is without any merit.

7. So far as contention of learned counsel for the petitioner that instead of filing a criminal complaint before the trial Magistrate, the petitioner should have approached the Police for registration of FIR, is concerned, the same is without any force. A

complainant has the option either to approach the Police agency with an application for registration of FIR under Section 154 Cr.P.C or he/she has option to approach the Magistrate with a complaint under Section 200 of the Cr.P.C. The discretion entirely lies with the complainant either to approach the Magistrate or to approach the Police and there is no bar to approach the Magistrate with a criminal complaint instead of approaching the Police even in cases where cognizable offences are disclosed from the contents of the criminal complaint.

8. The contention of the learned counsel for the petitioner that learned trial Magistrate should have directed investigation in terms of Section 202 Cr.P.C before issuing process against the petitioner, is also without any merit. It is only in the cases, where the Magistrate is unable to decide whether or not there is sufficient ground for proceeding that he is required to direct investigation of a case in terms of section 202 of Cr.P.C and postpone the issue of process against the accused. In a case of present nature, where the allegations made in the complaint supported by the preliminary evidence clearly disclose commission of offence under Section 420 of IPC, it was not at all necessary for the learned Magistrate to direct investigation in terms of Section 202 of Cr.P.C before issuing process against the

petitioner. The ground urged by learned counsel for the petitioner is, therefore, without any merit.

9. So far as the ground relating to non-application of mind in issuing process against the petitioner is concerned, the same is also without any merit. A perusal of order dated 17.07.2023 passed by learned trial Magistrate clearly reveals that the learned Magistrate has framed opinion for taking cognizance of offences under Section 420/506 IPC after analyzing contents of the complaint and the evidence. The order passed by the learned trial Magistrate, whereby, the process has been issued against the petitioner, may not be detailed one, but it clearly reflects application of mind on part of the learned Magistrate. It bears reference to the statements of the witnesses recorded and the contents of the impugned complaint, meaning thereby, the learned trial Magistrate has applied his mind while passing the said order.

10. For the foregoing reasons I do not find any merit in this petition. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR

11.07.2025

Sarveeda Nissar

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No