

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

Case: CRM(M) No.275/2022
c/w
CRM(M) No.874/2022

Renu Sharma and another

..... Petitioner(s)

Through :- Mr. Amarveer Singh Manhas, Advocate

Vs

Union Territory of J&K and another

.....Respondent(s)

Through :- Mr. Mohd. Irfan Inqlabi, GA
Mr. Satinder Gupta, Advocate

**CORAM:
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

ORDER
03.03.2025

CRM(M) No.275/2022

1. The Investigating Officer is present in person.
2. The petitioners have challenged FIR No.37/2022 for offences under Section 461/31 IPC registered with Police Station, Bakshi Nagar, Jammu on the basis of a complaint filed by respondent No.2 against them before the Court of learned Special Mobile Magistrate (Electricity), Jammu.
3. Heard and considered.
4. It appears that an application under Section 156(3) Cr.P.C. came to be filed by respondent No.2 against the petitioners alleging commission of offences under Section 453, 454, 456, 457, 379, 380 read with 120-B IPC. In the application, it was alleged that respondent-complainant is residing as a

tenant in Flat No.102 Block-D in Kamdhenu Homz, Toph Sherkhania, Jammu since September, 2015 on the basis of a rent agreement executed by petitioner-Renu Sharma and that he is paying monthly rent to the landlord at the rate of Rs.22,500/-. It was claimed that the complainant is residing in the said flat along with his family and that his all belongings are lying in the said premises. It was alleged that in the month of April 2022 when respondent-complainant had gone to his native place for some time, on his return on 9th March, 2022 he found that lurking house trespass, house breaking, theft and burglary had taken place in his aforesaid premises and some unknown persons had entered his flat and changed the main entrance door lock. After making enquiry and going through the CCTVs footage, it was confirmed that the petitioners have illegally trespassed into the flat in question and changed the main entrance lock from inside thereby committing the offence of lurking house trespass and house breaking along with theft and burglary.

5. It seems that when the aforesaid complaint was filed before the learned Trial Magistrate, preliminary statement of respondent-complainant was recorded on oath on 19th March, 2022. On the said date i.e. on 19th March, 2022 learned Trial Magistrate after recording the preliminary statement of respondent-complainant thought it appropriate to get a detailed enquiry conducted so as to ascertain truthfulness or otherwise of the allegations made in the complaint. The enquiry was entrusted to SSP Jammu with a direction to submit his report on the next date of hearing which was fixed as 24th March, 2022. It seems that preliminary enquiry was conducted by Dy.SP HQ Jammu, who submitted his report dated 28th March, 2022 before the learned Magistrate.

In the report, the enquiry officer concluded that the landlord has not acquired the possession of the tenanted premises by following the proper procedure and even the tenant has not followed the procedure. It was also concluded the tenant has not been paying rentals and other dues regularly whereas the landlord has put his locks on the premises without the consent of the tenant.

6. After considering the aforesaid report, the learned trial Magistrate passed the impugned order dated 29.03.2022 directing the SHO Police Station, Bakshi Nagar, Jammu to register an FIR and SSP Jammu was further directed to appoint an investigating officer of a gazetted rank with integrity and experience.

7. The issue that falls for determination in this case as to whether it was open to the learned Magistrate to direct registration for an FIR after having taking cognizance of the offences.

8. A direction for registration of an FIR can be issued by a Magistrate in exercise of his power under Section 156(3) of the Cr.P.C. If we have a look at the provision contained in Section 156 the same fall in Chapter XII of the Cr.P.C. beginning with Section 154, which relates to the registration of information in cognizable cases and culminating with Section 176 which relates to enquiry by Magistrate into cause of death. Section 156 Cr.P.C. does not contemplate recording of preliminary statement of a complainant at the time of issuing a direction for registration of an FIR. In fact, a direction in terms of Section 156(3) Cr.P.C is issued at pre-cognizance stage.

9. The recording of preliminary statement of complainant and his witnesses is provided under Section 200 of the Cr.P.C. which falls in Chapter

XV of the Cr.P.C. It begins with Section 200 which relates to examination of the complainant and culminates with Section 203 which relates to dismissal of a complaint. Once a Magistrate examines a complainant on oath in terms of Section 200 of the Cr.P.C., it means that he has taken cognizance of an offence.

10. The provisions contained in Section 156 which fall under Chapter XII of the Cr.P.C. relate to pre-cognizance stage and the Magistrate under Section 156(3) of the Cr.P.C. is vested with jurisdiction to direct SHO concerned to register an FIR if the information laid before him discloses a cognizable offence. Section 200 of the Cr.P.C. which falls under Chapter XV pertains to post cognizance stage and once a Magistrate decides to examine the complainant on oath and proceeds to adopt the procedure prescribed under Section 202 of Cr.P.C. by directing an inquiry into the truth or otherwise of the allegations made in the complaint/information laid before him/her, it is not permissible in law to revert back to the pre cognizance stage and exercise power under Section 156(3) of the Cr.P.C. The law on this aspect of the matter is very clear. I am supported in my aforesaid view by the judgment of this Court passed in the case of *Mohd. Aijaz Vs. Sajad Ahmad Dar and anr.* (CRMC No.285/2017) decided on 18.02.2021.

11. Coming to the facts of the present case, it is clear from the record that the learned trial Magistrate had on 19.03.2022 taken cognizance of the offences by recording preliminary statement of the complainant and thereafter directed SSP, Jammu to hold an enquiry with a view to ascertain truth or falsehood of the allegations made in the complaint. Having undertaken

recourse to the aforesaid procedure it was not open to learned trial Magistrate to direct the police to register an FIR after receiving the report of enquiry from the police. The order dated 29.03.2022 passed by the learned trial Magistrate in this regard is, therefore, unsustainable in law. Once the said order is found to be unsustainable in law, the impugned FIR registered pursuant thereto being a result of illegality, also becomes sustainable in law.

12. For the foregoing reasons, the petition is allowed and impugned order dated 29.03.2022 passed by the learned trial Magistrate and consequent FIR No.37/2022 registered by Police Station, Bakshi Nagar, Jammu is hereby quashed.

13. The learned trial Magistrate shall, however, proceed further in the complaint filed by respondent-complainant by treating it is a private complaint and follow the procedure as laid down in chapter XV of the Cr.P.C.

14. A copy of this order be sent to the learned trial Magistrate.

CRM(M) No.874/2022

1. Official respondents are directed to produce case diary regarding FIR No.113/2022 of Police Station, Bakshi Nagar, Jammu on the next date of hearing for perusal of the Court.

2. List this matter for consideration on **22.04.2025**.

3. Interim direction, if any, to continue till next date of hearing before the Bench.

(SANJAY DHAR)
JUDGE

JAMMU
03.03.2025
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