

**IN THE HIGH COURT OF JAMMU KASHMIR AND LADAKH
AT SRINAGAR**

*Reserved on : 04.06.2025
Pronounced on: 08.07.2025*

**WP(C) No. 1186/2025
CM No. 3124/2025**

1. Dr. Noor Mohammad Bilal, age 73 years
S/o. Abdul Rehman
2. Dr. Shahnaz, age 57 years
W/o. Dr. Noor Mohammad Bilal
Both Residents of Naseem Bagh, Habak, Hazratbal,
Srinagar, Kashmir UT of J&K

Petitioners....

Through: MR. S. H. Thakur, Adv.

Vs.

1. UT of J&K, through Principal Secretary to Govt.
Home Department, Civil Secretariat Srinagar.
2. Director General of Police (DGP)
UT of J&K, PHQ Peerbagh, Srinagar Kashmir.
3. Senior Superintendent of Police (Sr. S.P.)
District Srinagar, Kashmir, UT of J&K.
4. Sub District Police Officer (SDPO)
Hazratbal, Srinagar.

Through: *Mr. Mohsin Qadiri, Sr. AAG with Ms. Nadiya Abdullah, Advocate*

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

1. The instant writ petition has been filed on behalf of the petitioners under Article 226 of the Constitution of India read with section 528 of the BNSS praying for the following reliefs:-
 - a. *Quash the order of closure of investigation by the Chief Judicial Magistrate, Srinagar in the protest petition by the order dated 29-01-2025 and quash the same as illegal and against the policy of the law.*
 - b. *Direct for a Denovo/Fresh investigation in the matter (FIR 35/2022) through any another reliable and credible investigating*

agency of the State so that all concerned including the actual culprits are brought to justice along with the persons who have misdirected the investigation, so that the justice is done to the petitioners who are teaching the law to the future and aspiring lawyers of the society.

c. Direct to deliver all the stolen articles to the petitioners after recovering the same from the actual culprits after proper identification and receipt as per the mandate of law (Sec 516,523 of CrPC)

2. In order to understand the controversy in the instant petition, it is necessary to first provide a summary of the facts of the case:

FACTUAL MATRIX OF THE CASE:

3. That on 7th April 2022 both the petitioners went for *Umrah* after putting locks on their residence leaving everything at home, including the gold ornaments (worth more than 75.00 lacs then) and cash of Rs 4.5 lacs. On 9 April 2022, the petitioners were informed by their relatives who live in the neighbourhood that an untoward incident has taken place at their residence, and an FIR No. 35/2022 under Sections 457 and 380 of the Indian Penal Code, was registered by their relatives at Police Station Nigeeen.
4. Aggrieved by the manner in which the investigation which was being conducted by concerned Police, an application came to be filed by the petitioners in terms of Section 153-C of Criminal Procedure Code before the Chief Judicial Magistrate, Srinagar, seeking monitoring of investigation. An order was passed in the aforesaid application on 23-11-2022, wherein the SDPO was directed to appear before the court along with CD file.
5. That finally the respondents filed the challan of the case by producing some accused persons, however as per the petitioners, no satisfactory investigation was conducted in the matter, and the Learned Chief Judicial Magistrate closed the proceeding on the basis of statement given by the Prosecuting Officer.
6. Being aggrieved of the performance of the Special Investigation Team (SIT) and the performance shown by the police during investigation, the petitioners filed a Protest Petition on 21-12-2023, which was

entertained by the court as there were glaring defects in the investigation conducted by the Special Investigation Team (SIT) as per the petitioners.

7. It is specific case of the petitioners that the Learned Chief Judicial Magistrate (CJM) heard the matter in absence of the counsel for the petitioners and closed the proceedings; vide order dated 29-01-2025 by observing that court has no powers to order for investigation by CBI or any other reliable agency in terms of Section 173(8) CRPC.
8. The petitioner is now aggrieved of the order passed by the Learned Chief Judicial Magistrate (CJM) Srinagar dated 29-01-2025, declining the relief with regard to further investigation by another agency including CBI.

Legal Analysis:

9. Heard learned Counsel for the petitioners and also Mr. Mohsin Showkat Qadiri, Learned Sr. Additional Advocate General on behalf of the respondents and also perused the record.
10. Without delving into the controversy of the instant case, this Court is aware of the established legal principle regarding the scope of investigation.
11. The courts primary objective is to ensure a fair, credible and impartial investigation to secure the ends of justice. The transfer of case to CBI is a complex issue and the courts have laid down guidelines, for when such a transfer is appropriate. Generally, it is not a routine matter and should be considered only in exceptional cases, such as when there are serious allegation of corruption, bias or a failure of the state police to conduct a fair investigation.
12. **Cases where investigation can be ordered to be transferred to CBI:**
 - i) Exceptional circumstances where there is a demonstrable need for an independent investigation;
 - ii) Need for specific evidence of the inadequacy or bias of the current investigating agency;

- iii) Public confidence; In high profile cases or those involving public interest;
- iv) Malafide intention or biasness against investigating agency;

13. Although, the power of transfer from one Investigating Agency to another Investigating Agency like CBI can only be done by the Constitutional courts and not by the Trial Courts. It has also been held that even the power of constitutional court to transfer such investigation must be in rare and exceptional cases, where the courts find it necessary. With a view to facilitate this court, reliance has been placed on **K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480**. The relevant para 13 and 17 are reproduced as under:

“13.....This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

“17the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the

investigation or where the investigation is prima facie found to be tainted/biased.”

14. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases, with a view to do justice and to instil confidence in the investigation or where, the investigation is prima facie found to be tainted/biased.
15. Even the law has been settled by the Apex Court that one cannot insist that an offence be investigated by a particular agency. This Court is fortified by view taken in case titled ***CBI v/s Rajesh Gandhi, 1997 Cri LJ 63***, that no one can insist that an offence be investigated by a particular agency. The relevant para of the judgment is reproduced as under:
- “.....The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with.”***
16. It goes without saying that the power of the constitutional courts cannot be exercised by transferring the investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate prestige of a party interested for such investigation. It is not a case where the petitioners are invoking the power of the constitutional court to refer the investigation to CBI, rather, it is a case, where, the petitioners are challenging the order of the Learned Magistrate in declining relief for transferring the investigation to CBI. Even the Hon’ble Apex Court has held that the power of the constitutional court has also limited and has to be exercised sparingly and not on the mere asking of the someone. This court is fortified by the observations made by the Hon’ble Apex Court in case titled ***Mithilesh Kumar vs. State of Rajasthan & Ors. (2015) 9 SCC 795***, wherein it has been held as under:

“Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court’s satisfaction whether the facts and circumstances of a given case demand such an order. No hard and fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extra ordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are common place when State police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is

the ultimate purpose of any investigation and who can do it better than an agency that is independent.”

17. In the instant case, the Learned Trial Court, in its order dated **29-01-2025**, while disposing of the application, has declined the prayer of the petitioners to direct the investigating agency to continue with the further investigation by a differently constituted professional team other than the present Special Investigation Team (SIT) preferably by an impartial agency viz CID or CBI. The relevant extract of the Order of the Trial Court is reproduced as under: -

“4. Heard and perused.

5. It is the beaten law that the court of magisterial level do not have powers to order investigation by CBI and even if the court comes assumingly to the conclusion that the investigation in the matter has been conducted properly, this court cannot order further investigation in terms of section 173 (8) of Cr.PC to be conducted by the CBI.

6. So being the situation and keeping in view the report submitted by the SIT the application in hand needs no further adjudication before this court and is accordingly disposed of which shall after due completion shall form part of the record.”

18. The procedure with regard to completion of investigation and the filing of the report has been provided under Section 173 of Criminal Procedure Code 1973. As per the mandate of Section 173(8) of the Code supra, the Magistrate has been empowered to direct further investigation after the report has been submitted by the investigating agency. The relevant part of the section 173(8) of CrPC is reproduced as under:

***“173. Report of police officer on completion of investigation.
(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports***

regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under subsection (2).”

19. Perusal of order dated 29-01-2025 transpires that the Trial Court was right in saying that the court of magisterial level do not have powers to transfer the investigation to CBI on mere asking because it is settled principle of law, that the courts subordinate to the High Court do not have the powers to transfer the investigation to CBI and, therefore, this court is of the view that the Trial court has exercised its jurisdiction within the four corners of the Criminal Procedure Code.
20. The issue at hand is whether a Chief Judicial Magistrate (CJM) is vested with the authority under the Code of Criminal Procedure (CrPC) to direct an investigation by an independent agency such as the Central Bureau of Investigation (CBI) or Crime Branch/CID. The answer, based on well-settled principles of law and judicial precedents, is in the negative.
21. Under Section 156(3) CrPC, a Magistrate may direct the officer in charge of a police station to investigate a cognizable offence. This provision does not extend to empower Magistrate to order an investigation by specialized investigating agencies such as the CBI. The rationale behind this limitation is rooted in the principle of separation of powers and the structure of investigative hierarchy under Indian criminal law.
22. Furthermore, Hon’ble supreme Court in case titled *Central Bureau of Investigation vs. State of Rajasthan and anr., reported as (2001) 3 SCC 333*. The Hon’ble court has observed as under:

“Section 156(3) of the Code empowers Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction. Though a Magistrate under Section 156(3) can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, nevertheless, when such an order is passed, any police officer superior in rank of such officer,

can as well exercise the power to conduct an investigation, and all such investigations would then be deemed to be the investigation conducted by the officer incharge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motuo on the direction of the superior officer or even that of the Government. However, the magisterial power cannot be stretched under Section 156(3) beyond directing the officer incharge of a police station to conduct the investigation. A Magistrate cannot direct CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code."

23 This Court also in the case titled "*Kewal Krishan Vs Union Territory CRM (M) NO. 157/2023 reported as 2024 SCC Online J&K 442* has observed as under:

"The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

24 The Hon'ble Apex Court in catena of judgements has held that inherent power vested in constitutional courts has to be exercised sparingly in exceptional cases and with caution only when necessary to secure justice. The Hon'ble Apex Court in *M/S Zandu Pharmaceutical Works Ltd. Vs. Md Sharaful Haque & Anr reported as 2005(1) SCC 122* has reaffirmed the guidelines of the celebrated case of Bhajan Lal, relevant extract of the aforesaid judgment is reproduced as under:

"8....Exercise of power under [Section 482](#) of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent

power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to

look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

25 **CONCLUSION:**

In view of the discussion above, it is manifest that the Learned Chief Judicial Magistrate has exercised jurisdiction strictly within the parameters of the Code of Criminal Procedure, 1973. The power to order further investigation under Section 173(8) CrPC is confined to directing the officer in charge of the concerned police station to undertake such investigation. Equally, the power under Section 156(3) of Criminal Procedure Code is similarly circumscribed and does not extend to commanding specialized agencies such as the Central Bureau of Investigation or the Crime Branch to investigate.

26. In the instant matter, the petitioner's grievance primarily arises from their dissatisfaction with the investigation conducted by the Special Investigation Team and the conclusion drawn in the final report. However, mere dissatisfaction with the manner in which the investigation was conducted, without any demonstrable perversity, illegality, or procedural impropriety, can not by itself furnish a ground to invoke the extraordinary inherent jurisdiction of this Court under Section 482 Criminal Procedure Code to quash the proceedings or to direct reinvestigation by a different agency. The power under Section 482 Criminal Procedure Code and section 528 of BNSS of 2023 is to be exercised sparingly, with caution, and only in exceptional circumstances to prevent manifest miscarriage of justice or to secure the ends of justice, none of which have been established on the record before this Court.

27. Further, as correctly observed by the Learned Chief Judicial Magistrate, the courts subordinate to the High Court do not possess inherent jurisdiction similar to that vested in the High Court under Section 482 CrPC. The Magistrate, therefore, rightly declined to traverse beyond the statutory powers conferred by the Code.

28. Having regard to the entirety of the factual matrix and the settled principles of law, this Court is of the considered opinion that no error of law or jurisdiction arising from the impugned order dated 29.01.2025 warranting interference by this Court in exercise of its inherent jurisdiction. This Court finds no good ground to hold that the petitioners have been subjected to any prejudice that goes to the root of the proceeding or that the impugned order has resulted in miscarriage of justice.
29. Thus, the writ petition is devoid of any merit and is accordingly dismissed. The impugned order dated 29.01.2025 passed by the Learned Chief Judicial Magistrate, Srinagar, is hereby upheld.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
08.07.2025
G. Nabi/Secy

- i. Whether the Judgment is Reportable: Yes/No
- ii. Whether the Judgment is Speaking: Yes /No