

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

Reserved on: 07.07.2026

Pronounced on: 17.07.2026

Uploaded on: 17.07.2026

*Whether the operative part or full
judgment is pronounced: **Full***

CRM(M) No.59/2023

ABDUL WAHAB QURESHI

...PETITIONER(S)

Through: - Mr. M. A. Rathore, Advocate.

Vs./

MOHAMMAD SHOWKAT & ANR

...RESPONDENT(S)

Through: - Mr. Moomin Sultan, Advocate.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has invoked jurisdiction of this Court under Section 482 of the Cr. P. C seeking quashment of order dated 04.02.2023 passed by the Court of 2nd Additional Sessions Judge, Srinagar (hereinafter "the Revisional Court"), whereby revision petition filed against order dated 04.07.2022 passed by the learned Judicial Magistrate 1st Class (1st Additional Munsiff), Srinagar (hereinafter "the trial Magistrate"), has been dismissed. It is pertinent to mention here that vide order dated 04.07.2022 passed by the learned trial Magistrate, the complaint filed by the petitioner against the respondent has

been dismissed by exercising powers under Section 203 of the Cr. P. C and vide impugned order dated 04.02.2023 passed by the Revisional Court, the aforesaid order of the learned trial Magistrate has been upheld.

2) It appears that the petitioner had filed a complaint against the respondent before the learned trial Magistrate alleging commission of offence under Section 406 of IPC by him. In the complaint it was alleged by the petitioner that he was running a Dhaba under the name and style of 'Punjabi Rasoi' at Old Gagribal Road, Srinagar, from January 2008 to 15th August 2019, in a shop owned by one Khatija Begum, who happen to be the mother of the respondents/accused. It was alleged that the petitioner was thrown out of the said premises after abrogation of Article 370 of the Constitution and the respondents did not return the articles belonging to the petitioner that were lying in the shop. It has been submitted that when the petitioner, after return of normalcy, approached the respondents for return of the articles, they totally refused to do so. According to the petitioner, these articles were retained by the respondents and the same were being used by them for running a Dhaba in the said shop. Thus, according to the petitioner, the respondents misappropriated the articles belonging to him without there being any legal right in their favour.

3) The learned trial Magistrate, after taking cognizance of the offence, postponed the issuance of process and directed SHO, P/S, Ram Munshi Bagh, Srinagar, to hold an inquiry for ascertaining the veracity of the allegations contained in the complaint in terms of Section 202 of Cr. P. C. It seems that the SHO, after holding an inquiry, submitted his report before the learned trial Magistrate who, vide impugned order dated 04.07.2022, after taking into account the allegations made in the complaint and the report of inquiry submitted by the SHO, came to the conclusion that no offence is made out against the respondents and that the petitioner is trying to give a criminal colour to a civil dispute which is existing between the parties. Accordingly, the complaint filed by the petitioner was dismissed in terms of order dated 04.07.2022.

4) The aforesaid order came to be challenged by the petitioner by way of a revision petition before the learned Revisional Court. Vide the impugned order dated 04.02.2023, the order passed by the learned trial Magistrate has been upheld and the revision petition has been dismissed.

5) The petitioner has called in question the order passed by the trial Magistrate, as upheld by the Revisional Court, on the grounds that the same is not sustainable in law, because there was sufficient material before the trial Magistrate to conclude that offence under Section 406 of IPC is, *prima facie*,

made out against the respondents. It has been submitted that the allegations made in the complaint clearly disclose commission of offence of criminal misappropriation on the part of respondents and, therefore, there was no occasion for the learned trial Magistrate to dismiss the complaint. According to the petitioner, the impugned orders passed by the courts below clearly amount to abuse of process of law, inasmuch as the courts below have failed to address the relevant issues.

6) I have heard learned counsel for the parties and perused record of the case including record of the trial court and the Revisional Court.

7) As already stated, it is the case of the petitioner that he was operating a Dhaba in the shop belonging to mother of the respondents and upon abrogation of Article 370 of the Constitution, the situation turned abnormal in Srinagar and he moved out of Kashmir Valley leaving behind all articles in the shop. It is case of the petitioner that when he returned to Srinagar and demanded his articles back from the respondents, they refused to do so and, in fact, the said articles were being used by the respondents for running a Dhaba in the same shop. Thus, according to the petitioner, the respondents have misappropriated the articles belonging to him.

8) The learned trial Magistrate was not sure about the veracity of the allegations made in the complaint and in order to make up his mind whether or not there are sufficient grounds for proceeding in the matter, he postponed the issuance of process to the respondents and directed an inquiry to be conducted by the SHO concerned in exercise of his powers under Section 202 of the Cr.P.C, pursuant whereunto, the SHO conducted the inquiry and submitted his report before the learned trial Magistrate.

9) In his report, the SHO informed the Court that in the year 2019, the petitioner had abandoned the shop in question and at that time, he had an outstanding rent of Rs.3.00 lakhs and he had also not paid the electricity charges of the shop. He further reported that in lieu of this outstanding amount, respondent No.2 retained the articles lying in the Dhaba as also the vehicle belonging to the petitioner bearing No.JK01AD-1448 as security. In the report it is further submitted that a settlement was arrived at between the parties, in terms whereof, the petitioner undertook to clear the outstanding electricity bills and he also paid an amount of Rs.50,000 out of the outstanding amount of Rs.3.00 lakh, leaving the balance outstanding amount as Rs.2,50,000, which he undertook to liquidate by 30th June 2020. It has been reported that this amount of Rs.2,50,000, has not been

paid by the petitioner to the respondents. The Inquiry Officer also seized a copy of the affidavit executed by the petitioner in which the terms of settlement between the parties have been recorded.

10) Thus, before the learned trial Magistrate, there was a complaint filed by the petitioner in which he alleged misappropriation of articles lying in the Dhaba by the respondents and there was also the report of the Inquiry Officer which showed that the said articles were retained by the respondents as security for repayment of outstanding amount by the petitioner to the respondents on account of rent of the shop, etc. Thus, there was sufficient material on record before the learned trial Magistrate to conclude that the dispute between the parties is purely of civil nature which has been given a criminal colour by the petitioner by filing a criminal complaint against the respondents. The finding recorded by the learned trial Magistrate in this regard is, therefore, based upon adequate material and it cannot be stated that the same is perverse.

11) It is a settled law that at the time of considering the issuance of process against the accused, the Magistrate is required not only to take into consideration the allegations made in the complaint, but he has also to take into consideration the material collected by the Inquiry Officer, to

whom the inquiry has been entrusted under Section 202 of the Cr. P. C. This is what has been done by the learned trial Magistrate while framing his opinion that no offence is made out against the respondents. Therefore, no fault can be found with the impugned order passed by the learned trial Magistrate as upheld by the learned Revisional Court.

12) There is yet another aspect of the matter which is required to be noticed. The petitioner has challenged the impugned order passed by the learned trial Magistrate by way of revision petition before the learned Revisional Court and has now invoked the jurisdiction of this Court under Section 482 of the Cr. P. C. The present petition is, therefore, a second revision petition under the garb of a petition under Section 482 Cr. P. C. Section 397(3) of the Cr. P.C, precludes a person from making a further application to the High Court if he has filed a revision petition before the Sessions Court. Bar put by Section 397(3) of Cr. P. C on the second revision petition cannot be allowed to be circumvented by resorting to inherent powers of the High Court under Section 482 Cr. P. C. It is only in very exceptional and rare cases that High Court would entertain a petition under Section 482 Cr. P. C against an order passed by a Sessions Court in exercise of its revisional jurisdiction. In the present case, I do not find any exceptional circumstance that would warrant interference in the

impugned orders passed by the courts below in exercise of powers under Section 482 of the Cr. P. C. On this ground also, the present petition is liable to be dismissed.

13) For the foregoing reasons, the petition is found to be devoid of merit and is dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR

17 .07.2026

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES/NO**

