

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No.155/2022
CrIM(M) No.493/2022

Nazir Ahmad Parra & Another

.....Petitioner(s)

Through: Mr.Umar Mir, Advocate

V/s

UT of J&K and Ors

..... Respondent(s)

Through: Mr.Faheem Nisar Shah, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

02.08.2022

1. The petitioners through the medium of instant petition have sought a direction upon respondent No.2 to register an FIR against the private respondents alleging that they have been beaten and molested by the private respondents.
2. Heard learned counsel for the parties and perused the record.
3. It is contended in the petition that there is a civil litigation going on between the petitioners and the private respondents in which an interim order has been passed by the Sub Judge (Chief Judicial Magistrate) Budgam. It is alleged that on 18.01.2022, when the petitioners alongwith their women folk visited the land which is subject matter of the civil litigation, the private respondents attacked them with lathies and dandaas. It is further alleged that wife of petitioner No.1 was given a beating and her clothes were torn. Besides this some articles were also broken. It is averred that the

petitioners approached with an application to Police Station Magam with the request to lodge an FIR but no action was taken in the matter. SSP Budgam was also approached but to no effect. Eventually the petitioners are stated to have approached the Chief Judicial Magistrate, Budgam by making an application under Section 156(3) of Cr.P.C seeking a direction upon SHO, Police Station, Magam to lodge an FIR. The application of the petitioners was endorsed by learned Chief Judicial Magistrate Budgam to the concerned Police Station for necessary action under law. But no action was taken by the Police.

4. In the above circumstances, the petitioners have approached this Court by way of instant petition.
5. Since the petitioners have already approached the Chief Judicial Magistrate Budgam and a direction has been passed by the said Court on 15.04.2022, directing the SHO Police Station concerned to take necessary action as warranted under law, as such, the proper course for the petitioners would be to approach the said Court by way of an appropriate application seeking an action against the official respondents for not having complied with the directions of the Chief Judicial Magistrate, Budgam.
6. The petition is accordingly disposed of with a direction to the Chief Judicial Magistrate, Budgam to ensure implementation of order dated 15.04.2022 passed by him on the application of petitioners under Section 156(3) of Cr.P.C. The petitioners are at liberty to

move a proper application before the Chief Judicial Magistrate Budgam in this regard.

7. Before parting it would be necessary to comment upon certain facts that have come to the notice of this Court upon perusal of the record. It seems that the Chief Judicial Magistrate, Budgam has forwarded the original application filed by the petitioners under Section 156(3) of Cr.P.C to the concerned SHO with endorsement that action under law be taken. The action of forwarding the original application to the police by the Chief Judicial Magistrate is not in accordance with the law.
8. This Court in the case of *Nasreena Bano vs. State and Ors*, 2019(2) JKL 135, has clearly emphasized that whenever any application whether on civil side or criminal side is received by a Court, the same shall be physically diarized and registered. The relevant para of the judgment is quoted as below:-

"Before parting, I also take this opportunity to place on record my concern regarding the manner in which our Magistracy acts when it receives a complaint under Section 156(3) Cr.P.C. Invariably, it is seen that the applications in original are forwarded to the police as if the Police Station is an extension of their Court. It needs to be appreciated that any application filed before the Magistrate is record of the Court, needs to be properly diarized and not sent in original to the Police Station. Such act may even amount to destroying the record of the Court. It is, thus, emphasized that henceforth, whenever any application whether on civil side or criminal side is received by a Court, the same shall be necessarily diarized and registered. Any Magistrate/Court found violating; shall be liable to action on the administrative side and may also be charged for destroying the record of the Court. Let all Magistrates (Judicial) note that whenever they receive such applications, they will diarize/register the same in the concerned Register. It is only the copy of the order along

with copy of such application, which shall be sent to the Police or other authority for report or action, as the case may be. "

9. It appears that despite circulation of aforesaid directions to the Judicial Magistrates, the applications in original are being sent by the Judicial Magistrates to the Police Stations with endorsements instead of sending copy of order and the copy of such applications to the police concerned. As has been observed by this Court in the afore quoted judgment, by acting in this manner the Magistrates are destroying the record of the Courts. Therefore, it is once again emphasized that the aforesaid directions of this Court be complied with in letter and spirit and it is provided that any Judicial Magistrate found in breach of aforesaid directions shall be liable to be dealt with on administrative side as well.
10. Copy of this order be circulated amongst all the Judicial Magistrates of the UT of Jammu and Kashmir and UT of Ladakh for information and compliance.