

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

**CRM(M) No.287/2021, CrIM No.(1028/2021)**  
**CrIM No.(1472/2021), CrIM No.(1473/2021)**

**Riyaz Ahmad Wagay** .....Petitioner(s)  
Through: Mr. Shuja-ul-Haq, Advocate  
V/s

**Union Territory of Jammu & Kashmir and Ors** ..... Respondent(s)  
Through: Mr.M.A.Chashoo, AAG  
Mr. Javaid Samad, Advocate

**CORAM:**

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

**ORDER**

05.04.2022

1. The petitioner has challenged the complaint filed by the respondent No.4 against him alleging commission of offence under Section 382 read with Section 149 IPC which is stated to be pending before the learned Chief Judicial Magistrate Anantnag. The petitioner has also challenged order dated 19.07.2021 passed by learned Chief Judicial Magistrate Anantnag, whereby, the Division Officer Police Post Sangam has been directed to recover the vehicles which are the subject matter of the complaint filed by respondent No.4 against the petitioner.
2. I have learned learned counsel for the parties and perused the record.
3. It emerges from the record that the complaint for commission of offence under Section 382 read with 149 IPC was lodged by respondent No.4 against the petitioner before the Chief Judicial Magistrate, Anantnag. It was alleged in the complaint that the petitioner snatched two vehicles belonging to respondent No.4 from his drivers. It appears that the learned Magistrate, after taking cognizance of the offence, postponed the issuance of process against the petitioner and directed the Incharge

CRM(M) No.287/2021  
CrIM No.(1028/2021)  
CrIM No.(1472/2021)  
CrIM No.(1473/2021)

PP Sangam to conduct an inquiry regarding the truthfulness or falsehood of the complaint in terms of Section 202 Cr.P.C. It further appears that the inquiry report was submitted by the police but the learned Magistrate did not feel satisfied with the same and directed that detailed inquiry regarding vehicles and their ownership be conducted. At the same time the learned Magistrate also directed that the vehicles in question be seized forthwith.

4. The aforesaid order of learned Magistrate came to be challenged by way of petition under Section 482 Cr.P.C, bearing CRM(M) No.130/2021. This Court vide its order dated 28.06.2021, while disposing of the petition, set aside the direction passed by the learned Judicial Magistrate with regard to the seizure of the vehicles but left it open to the learned Magistrate to pass appropriate orders with regard to the possession and custody of the vehicles on merits once the detailed enquiry report is received.
5. After passing of the aforesaid order, another order dated 19.07.2021 came to be passed by the learned Magistrate on the basis of the report filed by the Inquiry Officer, wherein the learned Magistrate observed that the vehicles in question have been forcibly snatched by the petitioner-accused and, as such, Division Officer Police Post Sangam be directed to recover both the vehicles from the petitioner. It is this order which is under challenge before this Court. Besides this the complaint filed by the respondent No.4 against the petitioner is also the subject matter of challenge.

CRM(M) No.287/2021  
 CrIM No.(1028/2021)  
 CrIM No.(1472/2021)  
 CrIM No.(1473/2021)

6. Learned counsel for the petitioner has submitted that it was not open to the learned Magistrate to direct seizure of the vehicles in question without first coming to a tentative conclusion as to whether offence is made out against the petitioner and in the absence of any process having been issued against the petitioner in the complaint filed by respondent No.4, it can safely be stated that the learned Magistrate had yet to make up his mind whether or not to proceed against the petitioner.
7. In order to test the merits of the contention raised by the learned counsel for the petitioner, it would be apt to refer to provisions contained in Section 202 of Cr.P.C. The same read as under:-

**202. Postponement of issue of process-(1)** Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

*Provided that no such direction for investigation shall be made,-*

- (a) *where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
- (b) *where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.*
- (2) *In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

*Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

CRM(M) No.287/2021  
CrIM No.(1028/2021)  
CrIM No.(1472/2021)  
CrIM No.(1473/2021)

*(3) If any investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”*

8. From a perusal of the aforesaid provision, it is clear that a Magistrate, who is authorized to take cognizance of an offence, may, if he thinks fit, postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. A plain reading of the provision reveals that a Magistrate in order to ascertain whether or not there are sufficient grounds for proceeding against the accused or in other words in order to ascertain the truth or falsehood of the allegations made in the complaint, may direct inquiry/investigation into the matter. Issuance of process is postponed by a Magistrate when, he on the basis of material on record, is not in a position to make up his mind as to whether any offence is made out against the accused or whether or not the allegations made in the complaint are true.
9. In the instant case, the fact that the learned Magistrate has decided to get the matter investigated by the Incharge P/P Sangam by issuing a direction in terms of Section 202 of Cr.P.C, shows that he was not sure on the basis of material on record whether or not the allegations made in the complaint are true or whether any offence is made out against the petitioner-accused. In such an eventuality, it was not open to the

CRM(M) No.287/2021  
CrIM No.(1028/2021)  
CrIM No.(1472/2021)  
CrIM No.(1473/2021)

learned Magistrate to direct the Incharge P/P to seize the vehicles which are subject matter of the complaint. Unless the learned Magistrate had material before him to come to a tentative conclusion that the vehicles in question were subject matter of theft, he could not have made an order for seizure of vehicles in question. The fact that the learned Magistrate has not issued process against the petitioner in the complaint filed by the respondent, shows that the learned Magistrate has yet to render a prima facie opinion about the commission of offence of theft by the petitioner. Without applying his mind to the material on record and without recording his satisfaction as regards the commission of offence by the petitioner/accused, it was not open to the learned Magistrate to direct the seizure of the vehicles. The order impugned is, therefore, without jurisdiction and is palpably illegal. The same, as such, deserves to be set aside.

**10.** Coming to the question whether filing of complaint by the respondent No.4 against the petitioner amounts to abuse of process of law, it is to be noted that the learned Magistrate has not yet decided as to whether any offence is made out against the accused and he has not issued any process against him. Even the detailed report of investigation by the Inquiry Officer is still awaited. In these circumstances, it would be premature for this Court to interfere in the matter and exercise its jurisdiction under Section 482 of Cr.P.C to quash the proceedings.

**11.** For the foregoing discussion, the petition is partly allowed and the impugned order dated 26.03.2021, passed by the learned Chief Judicial

CRM(M) No.287/2021  
CrIM No.(1028/2021)  
CrIM No.(1472/2021)  
CrIM No.(1473/2021)

Magistrate Anantnag, vis-à-vis seizure of vehicles, is set aside. It shall, however, be open to the learned Magistrate to pass fresh orders for custody of the vehicles which are subject matter of the complaint, after the detailed final report of the enquiry is produced by the Incharge P/P Sangam before him on the basis of material on record and the learned Magistrate decides to issue process against the petitioner-accused.

12. With the consent of the learned counsel for the parties the subject complaint and ancillary applications pending before the Court of Chief Judicial Magistrate Anantnag are withdrawn from the said Court and transferred to the Court of learned Special Mobile Magistrate (Sub Judge) Anantnag for disposal under law. The Chief Judicial Magistrate shall send the record of the case to the transferee Magistrate forthwith. The parties are directed to appear before the transferee court on 18.04.2022.

13. Petition stands disposed of accordingly.

14. Copies of this order be sent to the courts of Chief Judicial Magistrate Anantnag and Special Mobile Magistrate (Sub Judge) Anantnag for information and compliance.

(SANJAY DHAR)  
JUDGE

**SRINAGAR**  
05.04.2022  
*Sarveeda Nissar*