

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

Case:- CRM(M) No. 327/2025
CrlM no. 634/2025

Ashok Kumar Bhagat

.....Petitioner(s)

Through: Mr. Amit Gupta, Advocate

Vs

UT of J&K and Anr.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
(28.04.2025)

01. Through the medium of the instant petition, filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita 2023 (hereinafter referred to as 'BNSS' for short), the petitioner has sought quashment of the order dated 06.10.2023 passed by the Court of learned Judicial Magistrate 1st Class, R. S. Pura, Jammu (hereinafter referred to as the 'trial Court' for short) whereby he has framed formal charges against the petitioner/accused under Sections 420, 467, 468, 471 IPC as also quashment of the charge sheet/final report under Section 193, BNSS bearing No. 29/2022 dated 25.03.2022 pending before the trial Court, on the main grounds that the order impugned dated 06.10.2023 is bad under law being non-speaking and devoid of application of mind; that no false application or statement as alleged was made by the petitioner before the complainant/ Tehsildar and he being as West Pakistan Refugee (WPR) 1947 is really the only surviving legal heir as revealed by the revenue extract i.e. **Annexure 3** to the petition.

02. Heard learned counsel for both the parties and considered their rival contentions.

03. I have gone through the petition in hand and the copies of the documents enclosed with the same as Annexure thereto. The learned counsel for the petitioner/accused has made available to the Court, the copy of the Trial Court case which has been perused.

04. The perusal of the First Information Report lodged by the Tehsildar, R. S. Pura, Jammu as well as the final report presented and pending before the learned Trial Court, prima facie disclose the commission of cognizable offences including the offences relating to cheating, forgery, fabrication of false evidence/statement etc.

05. It is a settled legal position that where an FIR or Final Police Report apparently discloses the Commission of cognizable offences, the Court should hesitate to interfere with the investigation in the case unless there is some clinching evidence going to the root of the matter.

06. The report in the case came to be filed by Tehsildar, R. S. Pura, Jammu pursuant to which the FIR No. 192/2021 under Sections 420, 467, 468 came to be registered with the Police Station R. S. Pura, Jammu. It is the case of the respondents that the allegations against the petitioner came to be established during investigation of the case which led to the filing of the final report under Section 193, BNSS before the learned Trial Court.

07. It is well settled by a catena of the judgments of the Hon'ble Supreme Court of India and also of the different High Courts including this Court that at

the stage of consideration of framing of charge, Court has not to conduct an inquiry but has to see whether on the basis of the documents, in support of the Police report/challan, a prima facie ground appears to be made out for framing of the charge. At the stage of framing of charge, the Court has to consider the broader probabilities of the case and even a strong suspicion, can warrant the framing of charge. Court in essence has to see whether there is a case to go for trial or not. Mini trial is not permissible at the stage of consideration of framing of charge for the purpose of ascertaining whether the case will end in conviction or acquittal. At the stage of framing of the charge, the Court is required to mainly rely on the prosecution case. However, if there is any clinching evidence going to the root of the prosecution case, same is permissible to be considered at the stage.

08. In the light of the facts and the circumstances of the case, the registration of the FIR, setting in motion of the investigation of the case and the presentation of the final Police Report appears to be well warranted under law.

09. There also appears to be no illegality with the impugned order dated 06.10.2024. However, the Court agrees with the learned counsel for the petitioner in his saying that impugned order dated 06.10.2024 has not been drafted in accordance with the law and procedure which can at the most be an irregularity and not illegality.

10. It is being observed that most of trial Magistrates entrust the drafting of the interim orders including orders regarding framing of charge to the subordinate staff, upon hearing the cases, under their verbal directions. The

Magistrates are required to either write the interim orders under their own hand or let them be typed in their presence and under their own dictation. Learned counsel for the petitioner during his arguments inter alia contended that even if the allegations against the petitioner can be supposed to be true yet the order impugned framing the charge has not been passed in respect of the relevant offences being attracted in the facts of the case.

11. Criminal Courts have the power to amend or modify the charge at any stage of the trial.

12. For the foregoing discussion, there seems to be no merit in the instant petition, which is dismissed. However, the Trial Court shall see whether in the facts and circumstances of the prosecution case, the offences mentioned in the order dated 06.10.2024 are attracted or not? He shall provide an opportunity of being heard to the Counsel for the petitioner in that behalf and shall modify or alter the charge, if any, required in accordance with the law.

13. Disposed of.

(MOHD. YOUSUF WANI)
JUDGE

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