

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

Reserved on: 21.07.2026

Pronounced on: 24.07.2026

Uploaded on: 24.07.2026

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

CRM(M) No.15/2025

MOHAMMAD SALEEM MALLA & ORS.

...PETITIONER(S)/APPELLANT(S)

*Through: - Ms. Asma Rashid, Advocate, with
Ms. Humaira Nabi, Advocate.*

Vs.

UT OF J&K AND ANR.

...RESPONDENT(S)

*Through: - None for R1.
Mr. Ibrahim Mehraj, Adv. (through VM)-for R2.*

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

JUDGMENT

1) The petitioners have challenged FIR No.129/2024 for offence under Section 305 of BNS registered with Police Station, Safakadal, Srinagar.

2) As per the allegations made in the impugned FIR, which has been lodged pursuant to the directions passed by the learned Judicial Magistrate, 1st Class (2nd Additional Munsiff), Srinagar, the complainant is lawful tenant of a shop situated at situated at Noorbagh, Srinagar, which, according to him was leased out to him some 24 years ago by petitioner No.2 after execution of a proper rent deed. It was submitted in the complaint that the complainant is

running his business under the name and style of 'M/S Taj Enterprises' in the said shop and is paying electricity and other taxes. It has been further alleged that petitioner No.1 is now eyeing the said shop as greed has prevailed upon him, and in this direction, he intends to dispossess the complainant from the shop in question by harassing him through verbal/physical means.

3) It has further submitted that in January 2024, petitioner No.1 damaged the steel roof of the shop and the matter was brought to the notice of Police Station, Safakadal, whereafter the parties entered into a compromise on 12.01.2024, and as per terms of the compromise, petitioner No.1 promised to return the rooftop of the shop. However, petitioner No.1 did not stop his unlawful activities and he illegally managed to break the lock of the shop and stole away items and materials from the shop worth lakhs of rupees. He also broke open inner walls and tried to change demography of the shop with a view to prove his claim over the same. It was further alleged in the complaint that the police, despite information, did not take any action in the matter and the petitioners started threatening the complainant and his family members.

4) The petitioners have challenged the impugned FIR and the proceedings emanating therefrom by pleading that the

immovable property in which the shop in question is located, is in a dilapidated condition. The petitioners have denied the tenancy and they have claimed that respondent No.2/complainant was only allowed to keep some of his material in the shop till he would get a shop on rent at some other place. It has been submitted that because the property in question is in a dilapidated condition, petitioner No.2 applied before the Competent Authority for grant of permission for reconstruction of the commercial complex and the permission was granted in favour of the petitioners in terms of order dated 16.02.2022.

5) It has been further submitted that the complainant/respondent No.2 filed a suit for permanent prohibitory injunction against the petitioners before the Court of learned 1st Civil Subordinate Judge (Municipal Magistrate) Srinagar, seeking a restraint order against his dispossession and dismantling of the suit property. Initially, an interim order came to be passed by the learned civil court in favour of the complainant, but ultimately, his application for grant of interim relief came to be dismissed by the said court in terms of order dated 27.04.2024.

6) It has been submitted that pursuant to the aforesaid events, respondent No.2 filed an application before the learned Judicial Magistrate 1st Class (2nd Additional

Munsiff), Srinagar, seeking registration of FIR against the petitioner, in which an order was passed by the learned Magistrate on 29.06.2024, which was challenged by the petitioners by way of a criminal revision petition before the learned 1st Additional Sessions Judge, Srinagar. The said revision petition came to be dismissed by the learned 1st Additional Sessions Judge, Srinagar, vide order dated 10.10.2024 by holding it as not maintainable, which order has been challenged by the petitioners by way of another petition before this Court bearing CRM(M) No.630/2024, which is stated to be pending before this Court.

7) The petitioners have contended that the allegations with regard to theft are absolutely false as the police in its report submitted before the learned Magistrate, has clearly stated that there was no evidence of theft on spot. It has been further contended that respondent No.2 has lodged the impugned FIR only to settle a purely civil dispute at his own terms.

8) I have heard learned counsel for the parties and perused record of the case.

9) A bare perusal of the contents of the impugned FIR brings it to the fore that there is a dispute between the petitioners and the complainant as regards the shop which is part of a commercial complex belonging to petitioner No.2.

While the petitioners claim that respondent No.2 is not their tenant, the said respondent claims that he is a tenant in respect of the shop in question. It is the further allegation of respondent No.2 that the petitioners are using all illegal means at their command to dispossess him from the shop in question.

10) The record reveals that respondent No.2 has already filed a civil suit against the petitioners before the civil court seeking an injunction against his dispossession as also against demolition of the building in which the shop in question is located. As per the documents on record which are not in dispute, the learned civil court has decided the interim application filed by respondent No.2 by virtue of a detailed order dated 27.04.2023, a copy whereof is on record. In the said order it has been observed that petitioner No.1, who happens to be defendant No.8 in the suit, *prima facie*, has been able to show that he is owner of the property in question and he has a proper and valid permission from the competent authorities for dismantling the said shop. It has been further observed by the civil court that respondent No.2/plaintiff, has not been able to establish a *prima facie* case in his favour and that owner of the suit shop is well within his rights to dismantle the same as he has got a valid building permission. The learned civil court has, after

analyzing the pleadings and the material on record, concluded that respondent No.2/plaintiff is not entitled to any relief and, accordingly, his application for grant of interim relief has been dismissed. It has been observed by the learned civil court that petitioner No.1/defendant No.8 is in possession of the suit shop. However, in order to safeguard the interests of respondent No.2, petitioner No.1/defendant No.8 has been directed to file an undertaking that he will hand over possession of one shop to the plaintiff/respondent No.2 in the ground floor of the complex as soon as the ground floor is complete. It has also been observed by the learned civil court that possession of petitioner No.1/defendant No.8 over the shop shall be subject to outcome of the suit.

11) From the foregoing material on record, which is not in dispute, it appears that there is evidence on record to show that the shop regarding which respondent No.2 has lodged the report is in possession of petitioner No.1 and not in his possession. Therefore, the allegations levelled by respondent No.2 with regard to theft in his shop appears to be an attempt on his part to convert a purely civil dispute into a criminal offence. Even the police, while submitting its report before the learned Magistrate, has stated that there is no

evidence of theft and that they could not find any evidence of theft on spot.

12) It has been contended by learned counsel for respondent No.2 that at the time of deciding as to whether or not a direction for registration of FIR is to be extended, the Magistrate is not expected to determine the veracity of the allegations made in the complaint, but the same have to be taken to be true at their face value and if the allegations disclose commission of a cognizable offence, there is no other option for the police but to register an FIR and undertake investigation of the case.

13) The aforesaid argument of the learned counsel for respondent No.2 appears to be attractive, but it does not take into consideration the changed position of law that has taken place with the advent of Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023. Section 173(3) of BNSS gives a discretion to the investigating agencies to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter in a case relating to commission of a cognizable offence which is made punishable for more than three years or less than seven years. Thus, the investigating agency is vested with power to conduct a preliminary inquiry with a view to ascertain the

veracity of the allegations made in the complaint before proceeding further in the matter.

14) In the present case, having regard to the previous litigation between the parties in respect of the shop in question, the police upon receiving copy of the complaint from the learned Magistrate, have rightly exercised the discretion of conducting a preliminary inquiry with regard to the allegations of theft made in the complaint, whereafter they have found that the said allegations are baseless.

15) For what has been discussed hereinbefore, it is clear that lodging of impugned FIR by respondent No.2, in the facts and circumstances of the case, is nothing but an attempt on his part to give criminal color to a purely civil dispute. The Courts have time and again discouraged the tendency to settle matters of purely civil nature by setting into motion criminal proceedings. In this regard, it would be apt to quote the following observations of the Supreme Court in the case of **Mohammed Ibrahim and others v. State of Bihar and another**, (2009) 8 SCC 751:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it, are not used for settling scores or to pressurise parties to settle civil

disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”

16) Again, in **Randheer Singh v. The State of UP and others**, (2021) 4 RCR (Criminal) 496, the Supreme Court has held that the criminal proceedings should not be permitted to degenerate into weapons of harassment.

17) The facts emanating from the record, make it clear that the instant case is a classic example of respondent No.2/complainant trying to settle a purely civil dispute relating to inheritance of ancestral property by way of criminal proceedings. Thus, it is a fit case where this Court should exercise its powers under Section 482 of Cr. P. C to prevent the abuse of process of law and to secure the ends of justice.

18) Accordingly, the petition is allowed and the impugned FIR No.129/2024 for offence under Section 305 of BNS registered with Police Station, Safakadal, Srinagar, and the proceedings emanating there from, are quashed.

(Sanjay Dhar)
Judge

Srinagar

24.07.2026

“Bhat Altaf-Secretary”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	Yes/No