

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

Case:-CRM(M) No.141/2020
CrIM No.527/2020

Reserved on: 09.03.2026

Pronounced on: 23.03.2026

Uploaded on: 23.03.2026

Whether the operative part or
full judgment is pronounced

Mushtaq Ahmad Ganie

.....Petitioner

Through: Mr. Bilal Ahmad Malla, Advocate.

VERSUS

**Union Territory of J and K
& another**

..... Respondents

Through: Mr. Jehangir Dar, Government Advocate.

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

1. The petitioner has invoked the jurisdiction of this Court under Section 482 of Criminal Procedure Code, seeking quashment of First Information Report No.60/2020 dated April 11, 2020 *qua* the petitioner, registered at Police Station, Sumbal, Bandipora.

2. Relevant facts in brief are that in the year 2020 due to outbreak of Covid-19 Pandemic, the Government has taken restrictive measures at all levels so as to prevent its spread across the country and in this regard the District Magistrate, Bandipora, also had issued order dated March 25, 2020 imposing general restrictions, followed by another order on April 4, 2020 under

Section 144 Cr.P.C for immediate prevention of danger to human life, health and safety. The District Magistrate Bandipora has imposed restrictions on the movement of any individual for any reason whatsoever into and out of Villages Konan, GundQaisar, Gund-Dachina of Tehsil Bandipora & Villages Hakbara & Madwan of Teshil Hajin.

3. Furthermore, Senior Superintendent of Police, Bandipora, was directed to implement the orders in letter and spirit. It was also provided that any violation of the order imposing restrictions under section 144 Cr.P.C shall invite punitive action under Section 188 of Indian Penal Code and other relevant provisions of law.

4. During the currency of the aforementioned orders, the petitioner along with co-accused, were found moving/travelling in vehicles, in violation of the lockdown restrictions, therefore, they were accordingly intercepted by the Police Patrol Party deployed for enforcement of the said lockdown restrictions. Upon questioning, no satisfactory explanation could be furnished by them for their presence on the spot. It is further alleged that the petitioner assaulted the police party, as a result whereof an FIR under Section 188, 269 and 353 IPC, came to be registered.

5. Accordingly, investigation in the aforesaid FIR was duly carried out and on culmination of the investigation, challan was presented before the Court of learned Judicial Magistrate Ist Class, Sumbal on November 26, 2020, however in the meanwhile, the petitioner has filed instant petition.

6. The grievance of the petitioner is that he is a Journalist by profession and at the relevant point of time, while he was returning to home, he was intercepted by the Naka Party and for no reason he was harassed and an FIR was registered against him. The further

submission of the petitioner is that under Section 60 of the Disaster Management Act, 2005, (Act of 2005) no cognizance of the offence can be taken except on a complaint made by the competent authority. Further plea raised by the petitioner is with regard to the non-compliance of Section 195 of the Criminal Procedure Code which *inter alia* provides that no Court shall take cognizance of any offence punishable under Section 172 to 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned, but according to the petitioner these mandatory provisions have been observed in breach by the prosecution.

7. Besides above, petitioner has also made factual references in defence, but no foundation regarding the relevancy of these references is laid down, therefore, it is not deemed necessary to go into that aspect of the matter.

8. On the other hand, while opposing the petition, besides giving factual narration in the objections filed by the respondents, it is also argued that the petitioner was found roaming in violation of restrictions imposed by the District Magistrate under Section 144 Cr.P.C and has also assaulted the police personnel on duty, therefore, in the light of the material collected during investigation, *prima facie*, the culpability of the petitioner is established, as such, this petition under Section 482, Cr.P.C is not maintainable and therefore, same may be dismissed.

9. Heard learned counsel for the parties and also gone through the record.

10. Since the petitioner has invoked the extra ordinary jurisdiction of this Court under Section 482 Cr.P.C, therefore, be it noted that jurisdiction under Section 482 Cr.P.C, cannot be liberally exercised and it has to be sparingly exercised, in cases where there

is a dire need of exercise of this power. It is also trite that correctness of allegations against the accused to be decided only in trial.

11. To the contention of the petitioner that he is a Journalist by profession and at the relevant point of time, he was returning home, there is nothing on record to substantiate that either he is a Journalist or at the relevant point of time, he was permitted to perform his duty as such, despite imposition of restrictions under Section 144 Cr.P.C.

12. Going by the allegations contained in the FIR and the material collected during the investigation, it appears that in order to prevent the spread of Covid-19 Pandemic, the restrictions under Section 144 Cr.P.C came to be imposed by the District Magistrate, Bandipora, but the petitioner along with co-accused were found roaming in disobedience to the said restrictions order thereby alleged to have facilitated the spread of the disease by their negligent acts. During questioning by the Naka Party, the petitioner alleged to have assaulted the police personnel on duty and in this regard, allegation is also borne out from the material collected during the investigation.

13. Perhaps the petitioner is reeling under the impression that he has been booked under the wrong provisions of law and further a complaint was required to be filed in terms of Section 195 of Cr.P.C, and other relevant provisions of Act of 2005, which is lacking in this case, therefore, he invoked the jurisdiction of this Court under section 482 Cr.P.C.

14. To the contrary, on wading through the record, it is seen that the District Magistrate, Bandipora had already filed a complaint dated April 11, 2020 in terms of Section 195 Cr.P.C *qua* the commission of offence under Section 188 IPC, nonetheless Section

195(1)(a)(i) of Cr.P.C bars the Court from taking cognizance of any offence punishable under Sections 172 to 188, respectively of the Indian Penal Code, unless there is a written complaint by a public servant concerned, however, there is neither any bar nor any prohibition in registration of FIR and investigation of the case but only on completion of investigation the embargo in Section 195 Cr.P.C would come into play and the Court would not be competent to take cognizance.

15. Turning to the case on hand, the petitioner has approached this Court prematurely at the pre-cognizance stage. Therefore, the question whether there is any violation of section 195 Cr.P.C is wholly far-fetched, being ipse dixit of the petitioner. Rather it appears to be an attempt to circumvent the procedure prescribed under the Code, in that, all these factual assertions are available to the petitioner at the stage of hearing on charge/discharge, including violation if any of the provisions of law before the trial court.

16. The trial Court is well within its jurisdiction to examine, as to whether or not there is compliance of Section 195 Cr.P.C or as to whether on the basis of the material collected during investigation, prima facie, commission of offence as alleged is made out, coupled with the fact that the Court can also alter or add to any charge at any time under Section 216 of Cr.P.C.

17. The assertions made by the petitioner predominantly can be raised and effectively available at the stage of charge/discharge, which expressly includes the question of compliance of Section 195 Cr.P.C. This Court in exercise of powers under Section 482 Cr.P.C is not required to and, in fact, cannot enter into the factual assertions made by the petitioner, as the same would necessitate appreciation of evidence, a function which is exclusively reserved for the trial Court.

18. In the given facts and circumstances of the case, Section 26 of the General Clauses Act, 1897, needs to be taken note of which provides that where any act or omission constitutes an offence under two or more enactments, then offender shall be liable to be prosecuted and punished under either or any of these enactments, but shall not be liable to be punished twice for the same act. This provision expressly gives prosecution the liberty to elect any applicable enactment(s). The only restriction is double punishment for the same offence.

19. The Investigating Officer on completion of investigation files the chargesheet under the relevant sections of the penal laws, as he deems fit, as this is the discretionary assessment of the I.O on the basis of material collected during the investigation.

20. At cognizance/framing of charge stage, the Court examines prima facie material and is competent to frame/alter charges. The Court is not bound by the Investigating Officer's discretionary assessment of applicable provisions, but Court acts on the basis of material available on record, therefore, it can add/alter the charges.

21. The petitioner in the case on hand has raised the grouse regarding violation of the provisions of Disaster Management Act, 2005, section 195 of the Criminal Procedure Code and Pandemic Disease Act, 1897, however, neither the chargesheet has been presented under the Act of 2005 nor under any of the provisions of Act of 1897, therefore, the petitioner cannot have a valid and legal justification to question the legality of chargesheet as same having been presented in violation these statutes, rather this is the discretion of the Investigating Officer based on the material collected during investigation and on filing of the chargesheet, the competent Court has ample jurisdiction to examine the material collected

during investigation to form an opinion as to whether ingredients of the alleged act of omission and commission, are made out or not, but in any case, the accused cannot insist for presentation of chargesheet under the penal statute of his choice, when such acts are punishable under two different statutes.

22. At the stage of framing of charge, the Court is only required to see whether there is strong suspicion or prima facie existence of the factual ingredients of the offence alleged in the chargesheet. It is not the stage to decide which statute is more appropriate. The Court will frame the charge under the existing chargesheet or if material does not disclose prima facie culpability of the accused then certainly it will result in discharge of the accused, but in any case, the Court cannot re-write the chargesheet.

23. For the foregoing reasons, no case for interference is made out, accordingly, petition is dismissed along with connected CrIM.

24. Let the trial Court record be transmitted forthwith and the trial Court shall commence the trial without further delay.

25. However, it is made clear that the observations made are only for the purpose of deciding the present petition and shall not be construed as an expression of opinion on the merits of the case. The learned Trial Court shall proceed with the matter uninfluenced by any of these observations and shall decide the case independently on its own merits in accordance with law.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
23.03.2026
Surinder

Whether order is speaking: **Yes**
Whether order is reportable: **Yes**