

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

CRM(M) No.608/2024

SHEIKH SHOWKAT

... PETITIONER(S)

Through: - Mr. Iman Abdul Muiz, Advocate.

Vs.

GHULAM JEELANI CHESTI & OTHERS ...RESPONDENT(S)

Through: - Mr. Sheikh Mushtaq, Advocate.

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

ORDER(ORAL)

20.05.2025

1) The petitioner has challenged orders dated 11.09.2024, 01.06.2023 and 15.07.2023 passed by learned Judicial Magistrate 1st Class (Sub Registrar), Srinagar. Vide order dated 11.09.2024, the learned trial Magistrate has, while dealing with the objections of the petitioner in terms of Section 84 of the Cr. P. C, directed the Deputy Commissioner concerned to provide status report regarding orders dated 01.06.2023 and 15.06.2023 and the said Authority has been asked to implement these orders and file compliance report. Vide order dated 01.06.2023, the Deputy Commissioner, Srinagar, has been directed to attach the whole or any part of the immovable property as well movable property of accused Sheikh Ghulam Qadir, respondent No.2

herein, and to seize bank accounts of the said accused in the name of Firdous Educational Institute, Zakura, Srinagar, maintained with J&K Bank, Branch Habak Srinagar, and J&K Bank, Branch Malabagh Srinagar. Vide order dated 15.07.2023, opinion has been framed by the learned trial Magistrate that only upon receipt of compliance report from the Deputy Commissioner, conclusion about ownership of the bank account, can be drawn.

2) Heard and considered.

3) It appears that a complaint for offence under Section 138 of the Negotiable Instruments Act was filed by respondent No.1 against respondents No.2 and 3 before the learned Trial Magistrate wherein the learned Trial Magistrate issued process against the said respondents.

4) It seems that during trial of the complaint, the accused stopped appearing in the case which compelled the learned Trial Magistrate to issue non-bailable warrants against them. It was reported by the executing officer that both the accused have absconded to Delhi and cannot be arrested. Therefore, in terms of order dated 27.12.2022, the learned Trial Magistrate declared the accused as absconders and proclamation in terms of Section 82 of the Cr. P. C was directed to be issued. It also appears that the aforesaid order

came to be challenged by respondent No.3 before this Court and vide order dated 17.02.2023 passed by this Court, the said accused was directed to appear before the learned Trial Magistrate. The learned Trial Magistrate was further directed to defer the proceedings of proclamation and attachment of property of the said accused. Accordingly, orders dated 27.12.2022 and 02.02.2023 were recalled.

5) The petitioner, claiming to be the owner of the attached property, challenged order dated 01.06.2023 passed by the learned trial Magistrate by filing a petition under Section 482 of Cr. P. C, which was registered as CRM(M) No.338/2023. The said petition was disposed of by this Court in terms of order dated 24.05.2024. While disposing of the said petition, it was provided that the petitioner herein has got a statutory remedy available under Section 84 of the Cr. P. C against the impugned order passed by the learned trial Magistrate and, as such, it would not be appropriate for this Court to exercise its jurisdiction under Section 482 of the Cr. P. C. The petitioner was given liberty to pursue his remedy before the learned trial Magistrate, who was directed to treat the application of the petitioner for recall of order dated 01.06.2023 as claim/objection in terms of Section 84 of the Cr. P. C and deal with and decide the same in accordance with the procedure prescribed in the said provision.

6) Pursuant to the aforesaid order, the learned trial Magistrate has passed impugned order dated 11.09.2024, whereby he has concluded that the compliance report in respect of order dated 01.06.2023 is necessary before proceeding further in the matter, meaning thereby that the learned trial Magistrate has sought implementation of attachment orders passed in respect of the property in question and has framed an opinion that the objections of the petitioner would be considered only after attachment order is implemented on spot.

7) I am afraid the procedure adopted by learned trial Magistrate is not countenanced by law. A bare perusal of the provisions contained in Section 83 and 84 of the Cr. P. C would reveal that after issuance of proclamation under Section 82 of the Cr. P. C, the Court can proceed to attach property of the accused under Section 83 of the Cr. P. C. It is also clear that Section 84 of the Cr. P. C provides that objections to the effect that the property does not belong to the accused can also be raised within six months from the date of such attachment. However, it does not bar raising of objection prior to the attachment. Thus, if a third party raises an objection prior to the attachment of the property, the court has to decide the same and if the court comes to the conclusion that the property does not belong to the

accused, the court can pass an order, either declining to attach the property or withdraw the attachment order. So, the observation of the learned trial Magistrate that the objections of the petitioner can be considered only after attachment of the property is effected on spot, is not in accordance with law.

8) For the foregoing reason, the impugned order dated 11.09.2024 passed by the learned trial Magistrate is set aside and the learned trial Magistrate is directed to proceed ahead and decide the objections filed by the petitioner to the attachment order most expeditiously after hearing the parties, without waiting for the compliance report of the Deputy Commissioner concerned.

9) A copy of this order be sent to the learned Trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
20.05.2025
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No