

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

CRM(M) No. 331/2020
CrIM Nos. 1214/2020 &
1215/2020

Vivek Sagar ...Petitioner(s)

Through :- Mr. Deepak Sharma, Advocate

V/s

UT of J&K and others ...Respondent(s)

Through :- Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE

ORDER
17.02.2021

(Oral)

01. The petitioner feels aggrieved of the order dated 02.09.2020, passed by the Special Railway Magistrate, Jammu, who passed the order impugned in exercise of powers vested in him under Section 156(3) of the Cr. PC.

Briefly stated the material facts are as under:-

02. A complaint came to be preferred by the complainant before the learned Special Railway Magistrate, Jammu, claiming therein that he had been subjected to a scam by online fraudsters and was, therefore, deprived of approximately Rs. 20,700/- on the pretext of granting him an online loan.

03. When the police was reluctant to entertain the complaint, a prayer was made that the powers under Section 156(3) of the Cr. PC be exercised and a case be registered in that regard.

The learned Magistrate by virtue of order dated 02.09.2020 ordered as under:-

“
.....
.....

Ex facie the cognizable offences are found to have been committed. Therefore at this stage, it is considered just and appropriate to allow the application and direct SSP Crime Branch, Jammu to look into the allegations and if some cognizable offence is found to have been committed by the accused persons, then only, an FIR shall be registered and the occurrence shall be investigated forthwith. The application is disposed of accordingly. Copy of this order along with application and supporting documents shall be served to the SSP Crime branch, Jammu by the complainant who shall report compliance within 15 days of the receipt of the order.”

04. Learned counsel for the petitioner states that if the learned Magistrate was satisfied that cognizable offences were on the face of it had been committed then there was no occasion for the learned Magistrate to leave it open to the respondents to look into the allegations to determine as to whether the cognizable offences had been committed or not.

05. On a perusal of the order impugned, it thus appears that there is a contradiction in the order passed by the Court below. While on one hand, the learned Magistrate appears to be satisfied that cognizable offences seemed to have been committed on the basis of averments made in the complaint, on the other hand, the learned Magistrate has forwarded the complaint to be looked into by the Crime Branch with a further direction to register a case only if some cognizable offences are found to have been committed.

06. The second portion of the order impugned, in my opinion, is contrary to the satisfaction already recorded, therefore, to that extent the order impugned on the face of it appears to be bad.

07. Be that as it may, the order impugned to the extent it leaves the issue of registration of FIR to the wisdom of the official respondents is bad in law and is, accordingly, set aside. The Incharge Cyber Cell would register an FIR and the same shall be investigated by the concerned Branch dealing with the Cyber offences.

08. Disposed of accordingly along with connected applications.

(Dhiraj Singh Thakur)
Judge

JAMMU
17.02.2021
(Muneesh)