

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM (M) 428/2026

Dr. Gulzar Ahmad.

...Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate.

Vs.

Assadullah Allaie & Anr.

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE.

ORDER

01.07.2026

01. The Petitioner has invoked the jurisdiction of this Court under Section 528 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking quashing of Order dated 21st of May, 2026 passed by the learned Special Mobile Magistrate (Passenger Tax and Electricity), Srinagar in an application titled '**Dr. Gulzar Ahmad v. Asadullah Allaie & Anr.**' and further seeks direction for registration of FIR for alleged commission of cognizable offences.

02. However, after arguing for some time, the learned Counsel appearing for the Petitioner has drawn the attention of the Court to the police report submitted by Incharge Police Post Humhama, wherein it has been specifically observed, thus:

"Report further reveals that on 26-03-2026 applicant Dr. Gulzar Ahmad Hagroo ploughed the disputed land by using a tractor to which the non-applicant objected, which led to the verbal altercation between the parties. As per the recorded statements and enquiry conducted so far, it was found that the applicant ploughed the disputed 12.5 marlas of land, upon which non-applicant objected. During the course of inquiry, the enquiry officer obtained a video recording captured at the scene of occurrence. Upon perusal of the recorded

video, it came to fore that the non-applicant and his wife Arifa Rasool entered into the patch of disputed land and used an abusive language against the complainant and also gave threats and slapped the complainant. Since, the matter is sub judice before Hon'ble Court of law, the alleged occurrence was found to have occurred to the extent of offences U/S 131, 351 (2) BNS which are non-cognizable and accordingly non-cognizable report has been diarized in dairy of this police post and report U/S 174 BNSS has been submitted to the Hon'ble Court of Law at Srinagar through P/S Budgam on 17-04-2026."

While banking upon the specific contents of the above police report, the learned Counsel for the Petitioner has submitted that despite there being clear and cogent *prima facie* allegations, which also find support from the police report, that the non-applicant and his wife-Arifa Rasool entered into the patch of disputed land and used abusive language against the complainant/ Petitioner herein and also gave slaps and threats, the learned Magistrate failed to exercise the jurisdiction as vested in it under Section 174 (2) of the BNSS.

03. Since, the controversy lies in a short compass and *prima facie* from the report of the police, commission of non-cognizable offences is made out, but still it appears that the learned Magistrate, though being in seisin of the matter, however, failed to exercise the jurisdiction under Section 174 (2) of the BNSS, whereas, to the contrary, without any justification, has dismissed the complaint merely by coloring the same as an outcome of a civil dispute.

04. Undoubtedly, there appears to be a civil dispute between the parties, but during the course of such dispute, it appears that the commission of non-cognizable offences is found to have taken place, which is duly substantiated by the report of the police, however, in such facts and circumstances, the learned Magistrate was required to exercise its power under Section 174 (2) of the BNSS, but the Magistrate has failed to exercise the jurisdiction vested in it.

05. Accordingly, the impugned Order dated 21st of May, 2026 passed by the learned Special Mobile Magistrate (Passenger Tax and Electricity), Srinagar in file No. 6376/2026 titled '**Dr. Gulzar Ahmad v. Assadullah Allaie & Anr.**' *ex-facie* suffers from jurisdictional error, therefore, same is set aside. The learned Magistrate is directed to re-hear the complainant/ Petitioner herein and pass appropriate orders in accordance with law, taking into consideration the report submitted by the police and other material collected during the course of inquiry expeditiously, preferably within one month from the date of receipt of copy of this Order.

06. **Disposed of.**

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
01.07.2026
"TAHIR"

