

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

CRM(M) No.471/2022 CrIM No.1357/2022 CrIM No.861/2023

Shabir Ahmad Malik

...Petitioner(s)

Through: Mr. Altaf Khan, Advocate.

Vs.

UT of J&K and Anr.

...Respondent(s)

Through: Mr. Faheem Shah, GA for R 1

Mr. Sheikh Manzoor, Advocate for R 2.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

04.08.2025

(ORAL)

1. Inherent power of this Court enshrined under Section 482 Cr.PC (now 528 BNSS) has been invoked by the petitioner for quashing of FIR No.31/2022 dated 29.09.2022 registered with Police Station Women Cell, Kupwara, for offence under Section 4 of "the Muslim Women (Protection of Rights on Marriage) Act, 2019" (hereinafter for short 'the Act of 2019).
2. Facts emerging from the record of the petition and as are stated therein would reveal that the petitioner herein claims to have pronounced *Talaq-e-Ahsan* vide Talaq Nama, annexed as Annexure II with the petition upon the respondent 2 herein being his wife having entered into matrimonial tie on 31.08.2022 while claiming to have exercised his option of pronouncement of said Talaq and right guaranteed to him under Shariat and Holy Quran inasmuch as also on account of the failure of the respondent 2 herein to maintain the matrimonial tie despite strenuous efforts put by the petitioner herein

compelled him, the petitioner herein to release the respondent 2 herein from the marital relation without committing any offence either under Indian Penal Code or the Act of 2019.

3. The petitioner states that on the basis of aforesaid *Talaq-e-Ahsan* dated 31.08.2022, the respondent 1 herein without any basis got the FIR in question registered against him the petitioner herein under the Act of 2019.
4. The petitioner herein has challenged the FIR in question fundamentally on the premise that the FIR is vague and does not disclose that the pronouncement of *Talaq-e-Ahsan* an offence under the Act of 2019.
5. **Response** to the petition has been filed by respondent 1 herein, wherein it is being stated that a complaint came to be received from the respondent 2 herein against the petitioner for registration of FIR under the provisions of the Act of 2019, while alleging therein that the petitioner has developed a ex-marital affair with one lady and is contemplate to contract marriage with that lady after divorcing the petitioner and in furtherance thereof, the petitioner herein send a triple talaq/divorce through text message on mobile phone upon the complainant and thus, committed an offence under the Act of 2019, and upon entertaining the complaint and receiving of the said text message as a piece of evidence, the offence was found to have been committed and consequently FIR registered.

Heard counsel for the parties and perused the record.

6. Before proceeding to advert to the case setup by the petitioner in the petition in hand and also as to whether the exercise of inherent power

is exercised in the matter, a reference to the following provisions of the Act of 2019 became imperative.

Section 2(c)

2. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(c) “talaq” means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

Section 3. Talaq to be void and illegal.—Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4. Punishment for pronouncing talaq.—Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

A conjoint reading of the aforesaid provisions would manifestly tend to show that the pronouncement of Talaq, be it Talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a husband upon his wife, by words either spoken or written or any electronic form or in any other manner whatsoever shall be void and illegal, and punishable by for imprisonment for a term which may extend to three years as also fine.

7. Having regard to the aforesaid position of law and reverting back to the case in hand, record tends to show that in the reply/status-report filed to the petition by respondent 1 it has been specifically stated that the complainant/respondent 2 herein alleged to have been divorced by way of triple talaq by the petitioner herein on her brothers mobile phone and same came to be communicated to the respondent 2 herein and the screen shots of the said text messages stand extracted and placed as evidence in the matter by the investigating agency, which position has not been disputed or denied by the petitioner herein, thus

reliance placed by the petitioner on the Talaq Nama as annexure-II *supra* pales into insignificance.

8. In view of the aforesaid position obtaining in the matter, inasmuch as having regard to the ambit and scope in exercise of inherent power vested in this Court and parameters set out by the Apex Court in case titled “**Priti Saraf and Anr. Vs. State of NCT of Delhi and Anr.**” reported in **2021 SCC Online SC 206**”, this Court is not inclined to examine inherent power and scuttle the prosecution at its inception.
9. Viewed thus, the petition is accordingly, **dismissed**. However, it is made clear that any observation made herein above in the matter shall be deemed to have been made only for the purpose of disposal of the instant petition also shall not be deemed to be expression of any opinion qua the guilt or innocence of the petitioner herein.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

04.08.2025

Ishaq

Whether the order is speaking? Yes/No
Whether approved for reporting ? Yes/No