

Serial No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case : CRMC No. 67/2016
CrIM No. 1034/2024

Reserved on: 05.03.2025
Pronounced on: .03.2025

1.Smt. Suresh Parihar,
wife of Ashwani Kumar Parihar
R/0 H. no. 30, Sarswati Vihar
Lower Muthi darmal
Tehsil & Distt. Jammu

2.Ms. Nivedita Parihar,
D/0 Aswhani Kumar Parihar
R/0 N.no. 30, Sarswati Vihar
Lower Muthi, Darmal Tehsil & Distt. Jammu

3.Rishang Parihar,
S/0 Ashwani Kumar Parihar
R/0 H. no. 30 Sarswati Vihar
lower muthi darmal , Jammu

4.ms. namrata parihar,
d/0 surjeet kumar parihar
R/0 H.no. 30 sarswati vihar
Lower Muthi, Darmal
Tehsil & Distt. Jammu

5.Ashwani Parihar,
S/0 Sh. D.N. Parihar
R/0 H. no.30, Sarswati Vihar
Lower Muthi Darmal
Tehsil & Distt. Jammu

6. Ashwani Rathore,
S/0 Sh. Dev Raj Rathore
R/0 Kuntwara, Kishtwar

...Petitioner(s)

Through: Mr. Achal Sharma, Advocate

VERSUS

1.State of Jammu and Kashmir
Through SHO Police Station, Domana
Jammu

2. Kulwant Mamhas
Son of Roop Nagar Manhas
R/o H.ni.32 Sarswati Vihar
Lower Muthi, Darmhal
Tehsil & District, Jammu

...Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER

1. The petitioners through the medium of the instant petition have challenged FIR No. 147/2015 dated 14.05.2015 for commission of offences under Section 425, 436-A, 506, 120-B RPC registered with Police Station, Domana, Jammu.
2. As per the impugned FIR which has been registered on the basis of the direction of the Chief Judicial Magistrate, Jammu issued under Section 156(3) of the Cr.P.C, the respondent No. 2-complainant and the petitioners are related to each other and they also happen to be neighbours. It has been alleged that on 04.05.2015 the petitioners along with their other family members sprayed some chemical on the plants and trees growing in the compound of respondent No. 2-complainant as a result of which these trees dried up. It has been further alleged that in this regard a complaint stands already filed before the Court, but despite this, on 09.05.2015 all the petitioners again trespassed into the land of respondent No. 2-complainant and again sprayed the chemical with the help of a pump on the plants and guava fruit trees growing on the land of the complainant. It has been alleged that the petitioners are hell-bent upon destroying the agricultural property of the respondent No. 2-complainant. It has been further alleged that after some time these trees started drying and dying. It has also been alleged that the petitioners openly threatened respondent No. 2-complainant and his son by declaring that they are in possession of most dangerous chemicals and that they would be spraying the same on respondent No. 2-complainant and his family members.

3. According to the petitioners, respondent-complainant No. 2 is their close relative and that they are next door neighbors. It has been submitted that respondent No. 2-complainant has illegally encroached upon the land of one Advocate, namely, Ram Raj Rathore and the said land is located in between the houses of the parties regarding which a civil suit is pending before the Court of City Judge, Jammu. It has been further submitted that respondent No. 2 in order to lend support to his case before the said Court illegally blocked the approach towards the house of the petitioners and this action of the respondent No. 2-complainant was challenged by the petitioners by way of a civil suit seeking protection of easementary rights. The suit is stated to be pending before the Court of City Judge, Jammu.

4. It has also been submitted that in the previous past respondent No. 2-complainant in order to victimize the petitioners had filed a criminal complaint before the Court of JMIC (2nd Additional Munsiff) Jammu alleging commission of offences under Sections 323, 341, 504, 506 RPC against the husband of petitioner No. 1 who happens to be the father of petitioner Nos. 2 and 3 and brother of petitioner No. 5. The said complaint came to be dismissed for non-prosecution on 04.10.2013. It has been further submitted that son of respondent No. 2 sent obscene messages from his Cellphone to the brother of petitioner No.5, which constrained him to file a complaint before the Senior Superintendent of Police, Crime Branch, Jammu in which registration of FIR has been recommended.

5. According to the petitioners, the aforesaid action infuriated respondent No. 2-complainant and in order to wreck vengeance upon the petitioners another complaint came to be filed by him against the petitioners alleging commission of

offences under Section 323, 327, 341, 506 RPC before the Court of JMIC(2nd Additional Munsiff), Jammu. When the process was issued by the learned Magistrate against the petitioners, the same was challenged by the petitioners by way of a petition under Section 482 Cr.P.C before this Court and the proceedings in the said complaint have been stayed by this Court in terms of order dated 30.05.2014. It has been claimed when the proceedings in the aforesaid complaint were stayed, respondent No. 2-complainant again filed an application under Section 156(3) of the Cr.P.C before Chief Judicial Magistrate, Jammu which culminated in registration of the impugned FIR.

6. On the basis of the aforesaid facts, it has been contended that the impugned FIR has been lodged by the respondent No. 2-complainant against the petitioners with malafide intention, so as to harass and victimize them. It has been contended that there is already a civil litigation going on between the parties and the dispute between the parties is basically of civil nature. It has been contended that allegations made in the impugned FIR are highly improbable and false. It has been further contended that impugned proceedings initiated against the petitioners are nothing, but abuse of process of law on the part of respondent No. 2-complainant and, as such, the same deserve to be quashed.

7. I have heard learned counsel for the parties and perused record of the case including the Case Diary.

8. The primary ground on the basis of which the petitioners have challenged the impugned FIR and the proceedings emanating there from is that the proceedings initiated against the petitioners are abuse of process of law, as the same have been launched in order to wreck vengeance against the petitioners

with a view to pressurize them to settle a civil dispute which is pending between the parties.

9. The documents placed on record by the petitioners, which are not in dispute, reveal that initially respondent No. 2-complainant had filed a complaint for offences under Section 323, 341, 504, 506 RPC against Aswhani Kumar Parihar who happens to be husband of petitioner No. 1 and father of petitioner Nos. 2 and 3. In the complaint, it was alleged by the complainant that on 20.1.2011 Aswhani Kumar Parihar had voluntarily obstructed and prevented respondent No. 2-complainant from going to the market and he had also abused him. The said complaint came to be dismissed for non-prosecution by the learned Magistrate in terms of order dated 04.10.2013. The documents on record produced by the petitioners along with the petition further reveal that the petitioners had filed a complaint against respondent No. 2 before the Senior Superintendent of Police, Crime Branch, Jammu alleging that son of the complainant had forwarded some obscene messages from his Cell phone to the brother of petitioner No. 5. It seems that SSP vide his communication dated 12.03.2014 has issued a direction for registration of a formal case in the matter.

10. The record further reveals that another private complaint came to be filed by the respondent No. 2-complainant against the petitioners in which it was alleged that petitioners threw waste material of their house along with some chemical substances in their adjoining plot due to which trees, vegetables and mango trees started fading away and the same have dried. It was also alleged that the petitioners obstructed the way of respondent No. 2-complainant and prevented him from going to his house and that he was caught from his collar and was given a beating. The proceedings in the said complaint have been stayed

by this Court in terms of order dated 30.05.2014. In the backdrop of the aforesaid facts, the impugned FIR came to be lodged by respondent No. 2-complainant.

11. From the aforesaid sequences of events, it appears that there is a dispute of civil nature going on between the petitioners and the complainant-respondent no. 2. It also appears that respondent No. 2-complainant has from time to time lodged several criminal prosecutions against the petitioners and their other family members and in fact in the private complaint filed by the respondent No. 2-complainant against the petitioners which has been stayed by this Court, the allegations made are similar to the allegations made in the impugned FIR only difference being the date of occurrence.

12. The Case Diary produced by the respondent No. 1-Investigating agency reveals that the impugned FIR has been under investigation since the year 2015. Investigation of the case has not been stayed by this Court. For the last 10 years the investigating agency has not been able to complete the investigation. A perusal of the Case Diary reveals that only two eye witnesses have been examined by the investigating agency, one is the complainant and the other is his son. Besides this one more witness has been examined during investigation and the said witness happens to be the Photographer, who has taken photographs of the damaged plants. This shows that no person other than the complainant and his son has supported the case of the respondent No. 2-complainant for all these 10 years. The occurrence is alleged to have taken place in broad day light and in open, therefore, it cannot be a case where only the complainant and his son has seen the occurrence. All these facts when seen in context, that there is a dispute of a civil nature going on between the petitioners and the complainant party who

has repeatedly made similar types allegations against the petitioners by filing successive criminal complaints against them, go on to show that this is a classic case of respondent No. 2-complainant trying to wreck vengeance upon the petitioners with a view to spite them and to coerce them to settle a civil dispute at his terms.

13. The High Court while exercising its inherent power under Section 482 of Cr.P.C owes a duty to look into attending and overall circumstances besides the averments made in the FIR or complaint to assess whether the criminal proceedings were initiated maliciously. The Supreme Court has in the case of **Mr. Robert John D'souza vs. Mr. Stephen V. Gomes**, SLP (Crl) No. 330/2015 decided on 21.07.2018, observed that Court must ensure that criminal prosecution is not used as an instrument of harassment for seeking private vendetta or with an ulterior motive to pressurize the accused. Again the Supreme Court has in the case of **M/S. Medchl Chemicals Pharma P. Ltd vs M/S. Biological E. Ltd. & Ors**, 2000(3) SCC 269, observed that frustrated litigants ought not to be encouraged to give vent to their vindictiveness through legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount. In the case of **Inder Mohan Goswami & Another vs State Of Uttaranchal & Others**, 2007(12) SCC 1, the Supreme Court has laid down that Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

14. As already stated the present case clearly appears a brazen attempt on the part of the respondent No. 2-complainant to prosecute and persecute the petitioners. The manner in which the complainant has been making repeated criminal complaints against the petitioners of more or less of similar nature

makes it clear that the same are actuated with a ulterior motive for wrecking vengeance upon the petitioners. Thus, it is a fit case were this Court should exercise its power under Section 482 of Cr.P.C to quash the impugned FIR and the proceedings emanating there from.

15. Accordingly, the instant petition is allowed and the impugned FIR No. FIR No. 147/2015 dated 14.05.2015 and the proceedings emanating there from are quashed.

16. Case Diary be returned to the respondent No. 1, through Mr. Pawan Dev Singh, Dy.AG

(Sanjay Dhar)
Judge

JAMMU
.03.2025
Bir

