



HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No.:- **CRM(M) No. 5/2020**

1. Om Parkash, age 64 years S/o Sh. Dewan Chand R/o Village Agore, Tehsil Bhalwal District Jammu.
2. Thoru Ram, age 64 years S/o Sh. Durga Dass R/o Village Agore, Tehsil Bhalwal District Jammu.
3. Behari Lal age 77 years S/o Sh. Dewan Chand R/o Village Agore, Tehsil Bhalwal District Jammu.
4. Rajinder Kumar age 47 years S/o Sh. Behari Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
5. Vipin Sharma age 36 years S/o Sh. Thoru Ram R/o Village Agore, Tehsil Bhalwal District Jammu.
6. Vinod Kumar age 34 years S/o Sh. Mohan Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
7. Rash Pal age 50 years S/o Sh. Hans Raj R/o Village Agore, Tehsil Bhalwal District Jammu.
8. Vinod Kumar age 37 years S/o Sh. Tara Mani R/o Village Agore, Tehsil Bhalwal District Jammu.
9. Sushil Kumar age 28 years S/o Sh. Bishan Dass R/o Village Agore, Tehsil Bhalwal District Jammu.
10. Vikram Sharma, age 30 years S/o Sh. Girdhari Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
11. Sunil Sharma, age 30 years S/o Thoru Ram R/o Village Agore, Tehsil Bhalwal District Jammu.
12. Kishore Kumar Age 31 years S/o Sh. Girdhari Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
13. Reenku Sharma age 32 years S/o Sh. Behari Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
14. Rakesh Age 45 years S/o Shg. Mohan Lal R/o Village Agore, Tehsil Bhalwal District Jammu.
15. Basant Ram Lambardar Age 85 years S/o Sh. Jagan Nath R/o Village Agore, Tehsil Bhalwal District Jammu.

.....Petitioner(s)



Through: Mr. Anuj Dewan Raina, Advocate.

Vs

1. Bodh Raj S/o Sh. Tej Ram R/o Village Agore, Tehsil Bhalwal District Jammu.
2. Subash Chander S/o Sh. Tej Ram R/o Village Agore, Tehsil Bhalwal District Jammu.
3. The Sub Divisional Magistrate, Jammu (North).

..... Respondent(s)

Through: None for R-1 and 2.
Mrs. Monika Kohli, Sr. AAG for R-3.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(19.01.2026)

1. All fifteen (15) petitioners herein joined together to invoke Section 133 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') for the sake of seeking necessary/appropriate order/direction thereby restraining the respondents No. 1 and 2 named herein from unloading trucks of wheat fodder at their shops situated in village Agore, tehsil Bhalwal district Jammu which was alleged to be causing nuisance by recurring air pollution harmful for the inhabitants and residents of the village.
2. In their said petition under Section 133 of CrPC, fifteen (15) petitioners came to allege that the respondents No. 1 and 2 herein had constructed shops by encroachment of State land in khasra No. 197 abutting National Highway at village Agore, tehsil



Bhalwal district Jammu wherefrom they are conducting their wholesale business of wheat fodder (Bhussa) by stacking wheat fodder in bulk in said shops for which heavy load carriers make trips five to seven times coming all along from Punjab carrying the supply of wheat fodder (Bhussa) and then unloading supplies for the business of the respondents No. 1 and 2.

3. The activity of loading and unloading of wheat fodder (Bhussa) by the respondents No. 1 and 2 is said to be causing air pollution in the area thereby posing a public nuisance to the inhabitants of the village.
4. Accompanying said main petition under Section 133 of the CrPC, the petitioners also filed an application seeking interim direction.
5. The Sub Divisional Magistrate (SDM), Jammu (North) came forward with a purported conditional order dated **17.08.2016** under Section 133 of CrPC thereby directing the respondents No. 1 and 2 herein to stop the activity of loading and unloading wheat fodder in the residential area with immediate effect and further to appear to show cause against said conditional order.
6. The respondents No. 1 and 2 came to represent their version before the Sub Divisional Magistrate (SDM), Jammu (North) by stating that they have been doing the seasonal work of wheat fodder (sale and purchase) for the last forty (40) years at village



Agore (Chak Singha) Garhi, tehsil Bhalwal district Jammu without any complaint at any point of time and for the purpose of said business, they have constructed a big shed/hall (40 feet wide and 25 feet high) along with shops in which the loaded trucks enter for carrying out unloading the stock which is then covered by tarpal so as to allow no escape of any kind whatsoever from the storage shed to cause any sort of pollution in the area.

7. The respondents No. 1 and 2 further referred that they were not the only persons doing the business of said nature in the locality but there were other wheat fodder shops at Raipur, Nardani, Gharota near Police Station, Daskal within the Municipal area Akhnoor and near Kamleshwar Mandir Akhnoor.
8. In their written response, two respondents herein did not divulge as to whether the site of their shops as well as storage shed are located upon ownership land or upon the State land.
9. The Sub Divisional Magistrate (SDM), Jammu (North), by virtue of order dated **28.10.2016**, came to make conditional order dated **17.08.2016** absolute thereby directing two respondents herein to remove the activity of loading and unloading of wheat fodder from the residential area.



10. Against said final order dated **28.10.2016** of the Sub Divisional Magistrate (SDM), Jammu (North), the respondents No. 1 and 2 preferred a revision petition on file No. 7/Revision of 2017 before the court of learned 1st Additional Sessions Judge, Jammu.
11. The court of learned 1st Additional Sessions Judge, Jammu, however, came to find a procedural lacuna in exercise of jurisdiction at the end of the Sub Divisional Magistrate (SDM), Jammu (North) by reference to the provisions of Sections 133 and 137 of CrPC, 1973 and, thus, set aside the impugned order dated **28.10.2016** by remanding the matter back to the Sub Divisional Magistrate (SDM), Jammu (North) with a direction to proceed further in the case in accordance with law and the observations made by the court of 1st Additional Sessions Judge, Jammu in its final order dated **21.11.2019**.
12. The Sub Divisional Magistrate (SDM), Jammu (North) was also directed to pick up the proceedings from the stage where he had called upon the respondents No. 1 and 2 herein to show cause. The parties were directed to appear before the Sub Divisional Magistrate (SDM), Jammu (North) on **29.11.2019** for further remand proceedings in the case.
13. Now, it is against the aforesaid order dated **21.11.2019** of the court of learned 1st Additional Sessions Judge, Jammu that the petitioners, being the original complainants having invoked the



proceedings under Section 133 of the CrPC, came forward with the present petition invoking inherent power of this Court vesting under Section 482 CrPC, with an end objective of somehow salvaging order dated **28.10.2016** of Sub Divisional Magistrate (SDM), Jammu (North).

14. The petitioners have come forward with the grounds of challenge as set out in para 20 (i) to (vii).
15. This Court is not convinced that the challenge being posed by the petitioners to the order of the court of learned 1st Additional Sessions Judge, Jammu is well meaning and worth indulgence for the reason that if the provisions of Chapter (X) of the Code of Criminal Procedure, 1973, which contain section 133 read with subsequent sections envisaging the mode and manner in which the proceedings initiated under section 133 CrPC are to be taken to logical end, is not followed in the manner as prescribed, then a final order, even if well meaning, cannot be allowed to stand by mere fact that it is well meaning.
16. This is what the court of learned 1st Additional Sessions Judge, Jammu came to do by apprising the Sub Divisional Magistrate (SDM), Jammu (North) that the procedural compliances to be done at his end in dealing with the matter under section 133 CrPC so initiated by the petitioners. The petitioners should not have felt any concern to rush to this Court with the present



petition and instead should have hurried themselves to the Sub Divisional Magistrate (SDM), Jammu (North) to revive the proceedings and to take the same to logical end as per the directions given by the revisional court of learned 1st Additional Sessions Judge, Jammu.

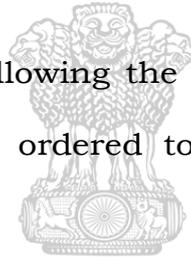
17. Be that as it may, this Court finds no reason to allow this petition and therefore, **dismisses** it by upholding the order dated **21.11.2019** of the court of learned 1st Additional Sessions Judge, Jammu with a modification to the extent that Sub Divisional Magistrate (SDM), Jammu (North) shall also enquire and verify as to whether the referred site of the shops and the storage shed set up by the respondents No. 1 and 2 for storage of wheat fodder obtains on the State land or on the proprietary land, be it of the respondents or someone else.
18. In case, the stocking of the fodder is taking place by reference to the shops and the storage shed which if found to be obtaining upon State land, then the authority concerned shall be well within its rights to get the encroachment removed from the State land, whosoever the said encroacher may be, including the respondents No. 1 and 2.
19. The Sub Divisional Magistrate (SDM), Jammu North is directed to issue fresh notices to all the concerned i.e., the petitioners and the respondents No. 1 and 2 for reviving of the proceedings.



Even if the petitioners do not cause their appearance, still the Sub Divisional Magistrate (SDM), Jammu North shall be bound to carry out the verification of the fact as to whether any State land has been encroached at the end of the respondents No. 1 and 2 in terms of construction of their shops and storage shed at the site and if found out to be so then to take the matter to its logical end.

20. A copy of this order be forwarded by the Registrar Judicial, Jammu to the Sub Divisional Magistrate (SDM), Jammu (North) for notice and compliance.

21. The detailed order is following the order dated 24.12.2024 vide which the petition was ordered to be dismissed as is hereby being done.



सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
19.01.2026
Naresh/Secy.

Whether order is speaking: Yes/No
Whether order is reportable: Yes/no