

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

CRM(M) No. 180/2022

Mohd. Younis and others

.....Appellant(s)/Petitioner(s)

Through: Mr. M. Zulkernain Chowdhary, Advocate.

Vs

UT of J&K and others

..... Respondent(s)

Through: Mr. Bhanu Jasrotia, GA.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER(ORAL)

20.12.2023

1. The present petition has been filed by the petitioners for quashing the FIR No. 0244/2021 dated 24.12.2021 registered with respondent No. 1 at the behest of respondent No. 2 for commission of offences under Sections 353, 336 and 332 IPC.
2. The FIR has been impugned on the ground that the petitioner No. 1 is already having a civil dispute with the respondent No. 3 in respect of which a civil suit titled "*Mohd. Younis Vs. Tasadaq Hussain and others*" has been filed and is pending before the court of learned Munsiff, Thanamandi, wherein the learned court has issued the order of status quo. It is further urged by the petitioner that the petitioner No. 3 is serving as a Havildar in Indian Army and on the day of alleged occurrence i.e. 21.12.2021 he was not present at the place of occurrence. In nutshell, the contentions raised by the petitioners for impugning the FIR are that because of the civil dispute the FIR impugned has been lodged and that the petitioner No. 3 was not present at the place of occurrence.

3. Status report stands filed by the respondent No. 1 stating therein that on 21.12.2021 a docket was received from Naib-Tehsildar, Executive Magistrate, Thanamandi stating therein that he along with Patwari Halqa pursuant to the orders passed by the Tehsildar, Thanamandi on the basis of application made by the respondent No. 3, visited on spot for the purpose of demarcating the disputed land situated at village Saaj. During demarcation of the said land, the accused, namely, Mohd. Younis, Farmeed Begum and Naheem Akhter started pelting stones on the Executive Magistrate and other staff, as a result of which some of the employees were injured, due to which demarcation could not be conducted. On receipt of the docket, FIR No. 244/2021 for commission of offences under Sections 353/323/332 IPC was registered. During the course of investigation, the Investigating Officer visited the spot, prepared the site plan and also recorded the statements of the complainant and other witnesses. As per the investigation conducted by the Investigating Officer, offences under Sections 353/332/336 IPC stands proved against the accused persons, namely, Mohd. Younis, Farmeed Begum and Naheem Akhter.
4. Heard learned counsel for the parties and perused the record.
5. Record depicts that the FIR has been registered at the instance of respondent No. 2 who happens to be the Naib-Tehsildar, Thanamandi, particularly when he alongwith his staff had gone for demarcation of the land and some of the employees got injured due to stone pelting by the accused persons. The petitioner No. 1 may be having a civil dispute with the respondent No. 3, but he was having no dispute with the respondent

No. 2, as such, FIR cannot be quashed simply because a civil dispute is pending before the court of learned Munsiff, Thanamandi between the petitioners and the respondent No. 3.

6. So far as the other contention of the petitioners that the petitioner No. 3 was not present at the place of occurrence when the incident took place can also not be taken care of in a petition under Section 482 Cr.P.C. The plea of alibi is the defence available to the accused and he can raise the same either before the Investigating Officer or during the course of trial as the case may be.
7. Though in the status report it has not been mentioned that the allegations have been proved against the petitioner No. 3, but still taking into consideration that the name of the petitioner No. 3 figures as an accused in the FIR, the present petition is disposed of by directing the Investigating Officer to consider the plea of alibi raised by the petitioner No. 3 in the present petition and proceed in accordance with law.
8. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

Jammu
20.12.2023
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.