

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

...
Crl R No. 39/2022

*Reserved on: 06.12.2023
Pronounced on: 28.12.2023*

Chaman Lal Sharma

.....Petitioner(s)

Through: Mr. G.S. Thakur, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Ms. Monika Kohli, Sr.AAG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

1. Through the medium of this criminal revision filed under Section 397 Cr.PC, petitioner seeks quashment of order dated 30.05.2022 passed by the learned Special Judge, Anti Corruption Jammu in complaint 07 of 2022, whereby the complaint filed by him has been dismissed.
2. Briefly, stating the case of the petitioner is that he and his family who were the displaced persons and the Government of Jammu and Kashmir for the rehabilitation of displaced families allotted land which was evacuee in favour of the petitioner on the basis of family strength, thus the land measuring approximately 95 kanal declared as an evacuee property, came to be allotted in terms of Government Order No. 578-C of 1954 to members of a family as mentioned in FORM-A under the aforementioned Government Order consisting of one Dwarka Nath, petitioner and sister, Sita Devi. Since the sister of the petitioner was married, therefore, according to the provisions of the Act of 2006, the land had to devolve upon petitioner and his brother in

equal shares. It is stated that the entire chunk of land was in the possession of Dwarka Nath, the brother of the petitioner, as the petitioner was serving in Indian Army and after superannuation the petitioner claimed his share in the allotted land which the brother of the petitioner refused. The petitioner filed a petition in terms of Provisions of SRO 328 read with SRO 739 for partition of the land falling under khasra no. 366 min and 367 situate at Village Hathal Tehsil Sunderbani District Rajouri. The Custodian, evacuee Property, Jammu by virtue of order dated 12.11.1997 accepted the plea of the petitioner as also his share to 50% of the land so allotted in favour of the family and, therefore, directed the Tehsildar Sunderbani respondent no.2 to demarcate the half of the land which falls in the share of the petitioner. Despite the fact the petitioner who is entitled to have 50% of the share out of the total land allotted on the basis of the family strength. However, the respondent no. 2 to 7 by misusing their official position changed the revenue entry and relegated the petitioner to the litigation without any legal justification. It is stated that respondent No. 8 in order to put the petitioner to undue losses and to give undue benefits to the respondent no. 8 changed the revenue record. It is further stated that respondent no. 2 to 7 by abuse of their official changed the revenue entry in the record pertaining to khasra no. 366 min and 367 of village Hathal, by adopting corrupt practices in order to give benefit to the said Chandu Ram by abuse of their official position, knowing well that the respondent No. 8 is neither the family member of the petitioner nor the share holder where the change in the revenue entry fraudulently could be made. Since the respondent no. 2 to 7 have committed fraud by misusing their official position changed the revenue entry by incorporating the name of respondent no. 8 with respect to the land falling

under khasra no.366 min and 367 as mentioned above which was allotted to the petitioner and his family members as mentioned above. The petitioner filed the complaint before the Court of learned Special Judge Anti Corruption, Jammu with the request to refer the complaint in terms of Section 156(3) Cr.P.C to investigate the illegalities being committed by the revenue authorities, with further prayer to monitor the investigation. However, the learned Special Judge Anti Corruption, Jammu dismissed the complaint on the ground that the Magistrate exercising jurisdiction u/s 156 (3) Cr.P.C cannot direct registration of FIR and the Court has no jurisdiction to entertain the application.

3. The petitioner challenges the impugned order dated 30.05.2022 passed by the trial Court, precisely on the following grounds:-

- (i) that the order impugned is against the law and facts as such liable to be set aside;
- (ii) that the order impugned is otherwise not sustainable in the eyes of law, once the petitioner who filed the complaint for seeking directions in terms of Section 156 (3) Cr.P.C to register the FIR and it appears to report that a cognizable offence has been committed then the respondent no.1 was under legal obligation to register the FIR and investigate the offence. The Ld Special Judge Anti Corruption Jammu rejected the complaint only on the ground that the Court at Jammu has no jurisdiction to entertain the complaint, it is the settled law as held by the Hon'ble Supreme court in AIR 1999 SC 3499, that "the jurisdictional aspect became relevant only when the question of enquiry or trial arises, it is therefore, fallacious thinking that only the Magistrate having jurisdiction to try the case has the power to take cognizance of the offence the Magistrate has the power is not impaired by territorial restrictions". Therefore, the Court below has wrongly rejected the application referring the same to the respondent no.1 for registration of FIR, therefore, the order impugned is bad and liable to be set aside.
- (ii) Because the order impugned is otherwise illegal and

perverse and as such liable to be set aside.

4. Section 156 of Code of Criminal Procedure reads as under:-

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned”

5. The Supreme Court in “*Kaushik Chatterjee v. State of Haryana and Others*” [(2020) 10 SCC 92] has laid down the following guidelines regarding jurisdiction:-

“20. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal courts in inquiries and trials can be summarised in simple terms as follows:

20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression “local jurisdiction” found in Section 177 is defined in Section 2(j) to mean “in relation to a court or Magistrate, means the local area within which the court or Magistrate may exercise all or any of its or his powers under the Code”.

20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local area

20.4. In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.5. Where an offence consists of several acts done in different local areas it may be inquired into or tried by a court having jurisdiction over any of such local areas.
(Numbers 2 to 5 are traceable to Section 178)

20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.7. In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either of the acts was done. (Section 180)

20.8. In certain cases such as dacoity, dacoity with murder, escaping from custody, etc., the offence may be inquired into and tried by a court within whose local jurisdiction

either the offence was committed or the accused person was found.

20.9. In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

20.10. The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.”

6. In the present case, the evacuee land measuring 95 kanals in Khasras No. 366 min and 367 at Hathal Tehsil Sunderbani, District Rajouri was allotted to the family of the petitioner. A complaint under Section 156(3) seeking direction to the respondent No. 1-Senior Superintendent of Police, Anti Corruption Bureau, Jammu to register an FIR against the respondent 2 to 8. The allegation of the petitioner was that by misusing the official position and in order to give benefit to respondent No. 8, the accused No 2 to 7 changed the revenue entry by incorporating his name as shareholder. The offence is alleged to have committed in Tehsil Sunderbani, District Rajouri and the said offence does not fall in the territorial jurisdiction of Police Station, Anti Corruption Bureau, Jammu.

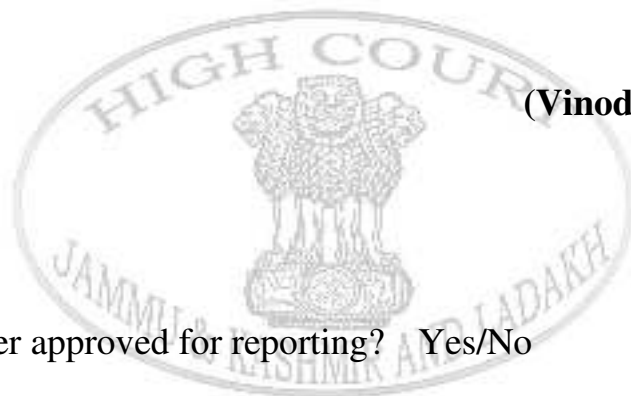
7. The learned trial Court while dismissing the application of the petitioner has also taken note of the judgment (AIR 1999 SC 3499) relied upon by the learned counsel for the petitioner and held that said judgment is distinguishable, in view of the fact that the present case seeks a direction to the SSP i.e. SHO Police Station ACB, Jammu to conduct investigation for

offence committed at Sunderbani which is clearly beyond the territorial jurisdiction of the Court at Jammu, whereas the matter involved in the judgment referred by the petitioner does not reflect that directions therein had been issued under Section 156(3) Cr.P.C to a competent territorial police station, for investigation of a case which was within the territorial competence of the Court having jurisdiction in the local limits of such a station, for the purpose of inquiry or trial.

8. The learned trial Court while dismissing the application filed by the petitioner has rightly held that whole of the offence is alleged to have been committed in Tehsil Sunderbani, District Rajouri which does not fall within the territorial jurisdiction of Police Station, Anti Corruption Bureau, Jammu.

9. In view of the above, the instant revision petition is found to be without any merit and the same is, accordingly, dismissed.

Jammu
28.12.2023
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(Vinod Chatterji Koul)
Judge

Whether approved for reporting? Yes/No