

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

Case:- CRMC No. 656/2018

1. **Rakesh Kumar (Age 37 Years)** Petitioner(s)
S/o Late Chhangu Ram
R/o Village Malhota, then Tehsil
Thathri,
Now Bhella, District Doda.
2. **Swarn Singh (Age 54 years)**
S/o Late Chhangu Ram
R/o Village Malhota, then Tehsil
Thathri,
Now Bhella, District Doda
At present Pooja Colony, Thathar,
Tehsil Jammu North, District Jammu
3. **Gandharv Sigh (Age 44 years)**
S/o Late Chhangu Ram
R/o Village Malhota, then Tehsil
Thathri,
Now Bhella, District Doda
At present Village Purkhoo,
Tehsil Jammu-North, Jammu.
4. **Santosha (Age 28 years)**
W/o Rakesh Kumar,
R/o Village Malhota, then Tehsil
Thathri,
Now Bhella, District Doda.
5. **Thakur Singh (Age 71 years)**
S/o Late Sh. Gian Chand,
R/o Kawani, Tehsil Bhella,
District Doda
At present Machine Domana,
Jammu.

Through: Mr. J. P. Gandhi, Advocate.
Ms. Meenakshi Gandhi, Advocate.

Vs

Baldev Singh,
S/o Chhana Ram,
R/o Village Malhota, then Tehsil Thathri,
Now Bhela, District Doda.

.....Respondent(s)

Through: None.

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

ORDER
(30.12.2024)

- 01.** Through this petition, the petitioners came forward invoking inherent jurisdiction of this Court under section 561-A of Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 being aggrieved of cognizance taking order dated 23.02.2018 passed by the court of Judicial Magistrate 1st Class, Thathri thereby taking cognizance of offences under sections 447, 451, 504, 506(1) & 34 of Ranbir Penal Code (RPC) on the complaint of the respondent.
- 02.** The petitioners in their petition have alleged that the filing of the criminal complaint by the respondent against them was a sheer *mala fide* at work under the garb of which the respondent actually wanted to deter the petitioner No. 1 supplied labour from carrying out MGNREGA Scheme related and assigned work at the given site and, therefore, in order to deter away the labour supplied by the petitioner No. 1 at the asking of the field staff of MGNREGA Scheme, foul play came to be played.
- 03.** Mr. J. P. Gandhi, learned counsel for the petitioners submits that the *mala fide* of the respondent in filing the criminal complaint naming five petitioners herein as accused therein is exhibited from the fact that the petitioner No. 4 is wife of the petitioner No. 1, petitioners No. 2 & 3 are real brothers of the petitioner No. 1, whereas

petitioner No. 5 who is a senior citizen is brother-in-law of the petitioner No. 1 and all the said four petitioners, at no point of time, were involved at the site in the alleged incident and, therefore, the cognizance taking order dated 23.02.2018 passed by the court below is an exhibit of non-application of mind acting mechanically on the version of the respondent as laid out in the complaint and in the statement without any searching examination.

- 04.** This Court, when peruses the complaint in the context of which the cognizance taking order dated 23.02.2018 came to be passed, comes across with express factual gaps in the case of the respondent against five accused persons who are the petitioners.
- 05.** The respondent came forward without any clarity as to whether he was aggrieved of any alleged act of omission or commission with respect to his ownership land of 5 kanal 15 marlas without disclosing khasra number in village Maloutha tehsil Thathri or was aggrieved of the alleged interference in the shamlat share of the land of the respondent and, thus, nowhere in his complaint he clarified that with respect to which particular land the alleged act of criminal trespass came to be carried out by the petitioner No. 1 as accused No. 1 by dumping of material that too by side of the respondent's land without mentioning which land, be it ownership land or shamlat land.

- 06.** Furthermore, the respondent in his complaint did not identify as to by which out of the five accused persons the alleged civil work of pacca path construction came to be carried out.
- 07.** In the complaint, the respondent did not divulge as to how he came to verify the identity of the accused persons to be named as accused and if he was already knowing them then why the respondent kept the relationship status of the petitioners undisclosed in the complaint which suppression is a pointer to the fact that the respondent didn't want it to be known to the court below that through the medium of his complaint he actually was intending to book the entire family of the petitioners in a criminal case so as to subject them to harassment.
- 08.** In fact, in the complaint the respondent had even alleged commission of offence under section 323 RPC but was not able to persuade and impress upon the court below to take cognizance of the alleged offence meaning thereby there was no such incident of voluntarily causing of hurt to the person of the respondent by the petitioners or any one of them and that exposes the falsehood of the respondent's complaint from the very inspection.
- 09.** The court below fell in manifest error of judgment by taking the cognizance without contemplating for an enquiry to be conducted at the first instance to confirm as to whether

there was any act of trespassing *qua* the ownership land of the respondent or not and that could have been done by seeking an enquiry report about the actual location of the respondent's land, be it ownership land or shamlat land share.

10. In view of the aforesaid, this Court finds that the cognizance taking order dated 23.02.2018 by the Judicial Magistrate 1st Class, Thathri is actually vitiated with perversity which deserves to be set-aside and consequently, the complaint also deserves to be quashed.
11. Therefore, this Court ***allows*** the petition by quashing the order dated 23.02.2018 passed by the Judicial Magistrate 1st Class, Thathri read with the complaint.
12. A copy of this order be forwarded by the Registrar Judicial, Jammu to Judicial Magistrate 1st Class, Thathri for consigning the case to record.

(RAHUL BHARTI)
JUDGE

JAMMU
30.12.2024

Bunty

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No