

Serial No. 100

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

CRM(M) No.236/2021

CrIM No.637/2021

Reserved on: 11.08.2025
Pronounced on: 29.08.2025

1. **Sushma Kumari**, Age 42 years
W/O Raj Kumar
R/O Sarore, Bishnah, Jammu.
2. Anil Kumar, Age 46 years
S/O Guran Ditta
R/o Sarore Bishnah Jammu.
3. Rekha Kumari, Age 37 years
W/O Anil Kumar
R/o Sarore Bishnah Jammu.

.....Petitioners

Through: Ms. Arsha Sharma, Advocate vice
Mr. Sachin Gupta, Advocate.

Vs.

1. Union Territory of Jammu & Kashmir
Through Station House Officer,
Police Station Bishnah, Jammu.
2. Raj Kumar S/O Girdhari Lal
R/O Pandorian, Manhasan,
Bishnah, Jammu.

..... Respondents

Through: Ms. Shazia Asaf, Advocate vice
Mr. P.D Singh, Dy. AG for R-1.
Mr. Pawan Kundal, Advocate for R-2.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioners seeking quashment of FIR No.35/2020 dated 28.02.2020

registered at Police Station Bishnah for commission of offences punishable under Sections 323, 341, 506, and 34 IPC.

2. It is contended that the petitioner No.1 is wife of respondent No.2 and their marriage was solemnized in the year 2003 according to Hindu rites and rituals, however, the marital relationship between them did not remain cordial; that respondent No.2 started ignoring and neglecting petitioner No.1 and the children born out of the wedlock; that thereafter, she filed two petitions before the Court of learned Munsiff Bishnah, one under section 488 CrPC and another under section 12 of the Domestic Violence Act, which are subjudice.

3. The impugned FIR has been challenged being counterblast to the matrimonial litigations, alleging that respondent No.2, harbouring animosity and intending to harass the petitioners, instigated the registration of FIR with Police Station Bishnah; that the FIR is false, frivolous and motivated solely to wreak vengeance. The allegations made in the FIR, even if taken at face value, do not constitute the ingredients of the offences punishable under sections 323, 341, 506, and 34 IPC.

4. Highlighting the history of prior harassment, the petitioners contend that the respondent No. 2 lodged a concocted criminal complaint under Sections 353/500 RPC against the cousin of petitioner No. 1 before the court of learned Munsiff Bishnah, targeting the relatives of petitioner No. 1, many of whom are employed in government service, with the intention to damage their reputation and pressurize petitioner No. 1 to compromise matrimonial disputes, on respondent No 2's terms.

5. Further, on 07.08.2019, a complaint on similar allegations as the impugned FIR was filed before the Senior Superintendent of Police, Samba. The complaint was inquired into by the Additional Superintendent of Police, who found the same

to be concocted, false, and baseless. The inquiry report specifically recorded that the dispute between the parties was essentially matrimonial in nature, involving verbal exchanges, and no physical assault or cognizable offence was substantiated.

6. The petitioners emphasize that the alleged incident in the present FIR is stated to have occurred in the year 2017, but the FIR was lodged only in the year 2020, after an unexplained delay of nearly three year. They submit that such delay, coupled with the earlier failed attempts to initiate criminal proceedings, demonstrates the *mala fide* intention of respondent No.2.

7. Pursuant to notices, respondent No. 1-Station House Officer, Police Station Bishnah, has filed status report on 27.05.2022, whereas resisting the petition, the respondent No.2 has also filed his objections on 23.03.2022.

8. Respondent No.1 has raised preliminary objection that this petition is not maintainable as it involves factual disputes which can only be adjudicated by leading evidence before the trial court and this court cannot appreciate evidence/statements which have been recorded by the Investigating Agency in view of the settled law by the Hon'ble Supreme Court of India; that the scope of 482 CrPC is very narrow and is to be sparingly exercised. It is also contended by respondent No.1 that the petitioners intend this court to adjudicate the facts which are disputed in nature. It has been further averred that on investigation of the case, the petitioners were found to have committed offences punishable under sections 341/323/506/34 IPC, as such investigation was concluded into chargesheet, which awaits orders of this Court to be laid before the court for trial.

9. Responding to the petition, respondent No.2 in his objections averred that this petition is not maintainable in view of the fact that no parallel enquiry can be made exercising power under section 482 CrPC, to find out the truth and falsehood

of the case, when investigation conducted by the police has proved offences against the accused. It is further contended that merely stating that the allegations are false and frivolous is not a ground to quash the FIR, as respondent No.2 disclosed complete facts and the manner in which offences took place.

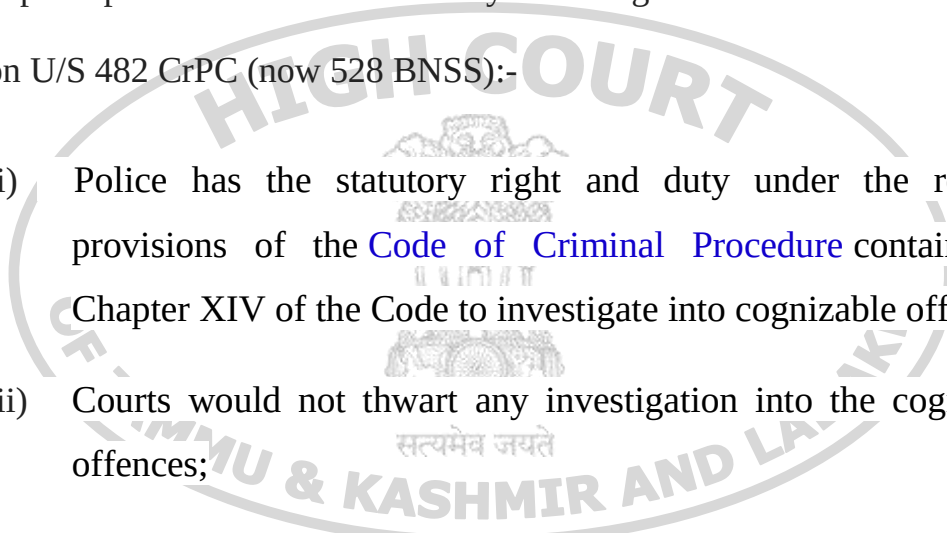
10. Learned counsel for the petitioners argued that the FIR falls squarely within the categories enumerated by the Hon'ble Supreme Court in "**State of Haryana v. Bhajan Lal**", reported as **AIR 1992 SC 604**, particularly when the allegations, even if taken at face value, do not constitute any offence; the allegations are so absurd and inherently improbable that no prudent person can conclude that there is sufficient ground to proceed and the criminal proceedings are manifestly attended with *mala fide* and instituted with an ulterior motive for wreaking vengeance, as such impugned FIR is liable to be quashed to secure the ends of justice.

11. Learned counsel for the Union Territory of J&K as well as the learned counsel for the complainant/respondent No.2, ex adverso, argued that on 04.10.2019, the accused-petitioners had waylaid the complainant, assaulted and snatched his cell phone on way to attend the court proceedings, in a case between the parties; that he had filed a complaint against the accused to the police, however no action was taken as one of the accused was serving as a policeman and was posted at Samba, as such, the enquiry conducted by the Additional Superintendent of Police, Samba was a partial, whereby accused were exonerated in the enquiry; that the complainant was thus compelled to approach the Court which ordered for registration of the case and a case was registered vide FIR No.35/2020 for the commission of offences punishable under Sections 323, 341, 506 and 34 IPC. On investigation of the case by the police, all the accused were found to have committed the offences punishable

under the aforesaid sections. It was prayed that the investigating agency be allowed to file the chargesheet so that the accused petitioners be brought to justice, before the court of law.

12. Heard learned counsel for the parties, considered their submissions and perused the record.

13. The Apex Court, after a survey of enunciation of law, right from the judgment of Privy Council in case titled “*King Emperor vs. Khwaja Nazir Ahmed*”, including Bhajan Lal by it, in a case *Neeharika Infrastructue Pvt. Ltd. vs. State of Maharashtra & Ors.*, reported as AIR 2021 SC 1918, has crystallized following principles for consideration by the High Courts on the inherent jurisdiction U/S 482 CrPC (now 528 BNSS):-

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- i) Police has the statutory right and duty under the relevant provisions of the [Code of Criminal Procedure](#) contained in Chapter XIV of the Code to investigate into cognizable offences;
 - ii) Courts would not thwart any investigation into the cognizable offences;
 - iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
 - iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under [Section 482 Cr.P.C.](#) is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
 - v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR/complaint;

- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

- xiii) The power under [Section 482](#) Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and
- xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under [Section 482](#) Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

14. Reverting to the factual background of the case in view of the law laid down by the Apex Court, it is found that the complainant-respondent No.2 who happens to be husband of petitioner No.1, was entangled in a litigation over their marital discord and the other petitioners along with his wife had been trying to harass the complainant so as to dictate their terms in their relationship.

15. The complainant initially filed the complaint before the police who allegedly favoured the accused, one of them being a Police man, as such, he approached the court of Magistrate which directed the lodging of FIR and on investigation of the case, the petitioners have been found to have committed the offences punishable under Sections 323, 341, 506 and 34 IPC. Since this Court while invoking the inherent jurisdiction under Section 482 CrPC has to pass orders under circumspection, and only in exceptional circumstances has to

intervene that too sparingly and cautiously. In the opinion of this Court, the FIR discloses the commission of offences which have also been found correct in the investigation of the case. As such, it will be in the interest of justice that the petitioners as accused are made to face the prosecution, for the commission of alleged offences. This Court does not find any ground so as to quash the FIR No.35/202 dated 28.02.2020 which has been prayed in this case.

16. Viewed thus, the petition is found to be without any merit and substance and the same is **dismissed**, accordingly, along with connected application. The Investigating Agency shall be at liberty to lay the charge sheet before the competent court of law. Interim direction dated 03.09.2021 shall stand vacated.

Jammu:
29.08.2025
Surinder

