

Sl. No. 133

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No.853/2025

CrIM No.1591/2025

Sarfu Ram, Age 65 years

S/O Sh. Shallo Ram

R/O Bharda Kalan

Tehsil Akhnoor District Jammu

...Petitioner(s)

Through:- Mr. Ajay Bakshi, Advocate.

V/s

UT of J&K through

SHO Police Station, Akhnoor

...Respondent(s)

Through:-

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

ORDER

02.09.2025.

1. Petitioner, through the medium of this petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), seeks quashment of Order dated 06.08.2025, whereby his application under Section 175(3) BNSS, 2023 was dismissed by the learned Judicial Magistrate (Munsiff) Akhnoor, in a complaint titled 'Sarfu Ram V. SHO Police Station Akhnoor' alleging seven accused of having committed trespass into his land and assaulted him.

2. Facts of the case, in nutshell, are that the petitioner claiming to be owner in possession of land measuring 7 Kanals 10 marlas comprising of Khasra No. 300, and 3 Kanals comprising of Khasra No. 301, situate at

Bharda Kalan, Tehsil Akhnoor, District Jammu alleged that on 08-06-2025, the petitioner instituted a civil suit against accused Kali Dass and Naresh Kumar, and the court of Munsiff Akhnoor ordered *status quo* over the suit land, however, that despite the order, on 29-06-2025 at around 1:00 PM, Nikki Ram, Kali Dass, Naresh Kumar, Sunil Kumar, Sonu, Naresh Kumar and Nikka Ram entered the land with a tractor and started cultivating it forcibly; that when the petitioner objected and showed the *status quo* order, he was pushed down and beaten with lathis using abusive language; that the wife of the petitioner when tried to record the incident, her cell phone was forcibly snatched and thrown down, demaging it; that the petitioner lodged a written complaint with Police Station Akhnoor on 29-06-2025, and also sent a complaint to SSP Jammu, however, no FIR was registered; that the learned Magistrate also vide order dated 06-08-2025, dismissed his application under Section 175(3) BNSS for registration of FIR, leading to the present petition under Section 528 BNSS, 2023.

Submissions:

3. Learned counsel for the petitioner submits that the impugned order dated 06-08-2025 passed by the learned Magistrate, is against law and facts, without appreciating that the accused persons forcibly trespassed into petitioner's land, assaulted him with *lathis*, caused injuries, and damaged the cell phone of his wife, which disclosed cognizable offences; that the learned Magistrate wrongly dismissed the application by relying on

pendency of civil suit, whereas civil and criminal remedies are not mutually exclusive.

4. Referring to the judgment of Supreme Court in the cases '*Punit Beriwalla v. State of NCT Delhi*' and '*Lalita Kumari v. State of UP*' that pendency of civil proceedings is not a ground for refusing registration of FIR, if *prima facie* cognizable offences are made out, he has assailed the impugned order; that the trial court was swayed away by pendency of civil litigation, overlooking that trespass, assault and damage are independent criminal acts. The impugned order suffers from grave error as it denies the petitioner criminal remedy, despite availability of 'prima facie' case. The petitioner has no other effective remedy except to invoke the inherent powers of this Court under Section 528 BNSS, 2023, to seek quashment of the impugned order. It was finally prayed that the impugned order be set aside with a direction to the Court below to reconsider the application and pass appropriate orders, in accordance with law.

5. Heard, considered the submissions and perused the impugned order.

6. Petitioner had moved a complaint to the Court below in terms of Section 175(3) BNSS, 2023 alleging that on 29.06.2025 at about 1300 hrs, when the complainant had gone to work over his land comprising of Khasra No.300/301, one Nikka Ram was using tractor in that land with the help of the other accused and trying to forcibly cultivate his land, and when

the complainant requested them not to do so and showed them the order of the Court to maintain status quo, accused Deepa Devi and Shubu pushed him down over the land and started beating him; that Kali Dass beat him with a *lathi* causing him physical injury and that on his raising hue and cry, his wife came on spot and who tried to click photographs and video-graph the incident, Naresh Kumar, Sunil Kumar and Sonu tried to snatch her mobile phone, which was broken, that he was threatened by all the accused that they would kill the son of the complainant if he would ever try to come into the land. It was alleged in the complaint that the complainant had reported the matter to the concerned police at Akhnoor and also had sent his application to SSP concerned, through registered post on 02.07.2025 but no FIR had been lodged by the police, as such, he had approached the court.

7. The learned Magistrate vide impugned order while observing that the allegations made by the complainant were vague and general in nature and not substantiated by any material on the record including absence of any medical record as well as failure to give his statement to the investigating officer despite being called time and again, there was no sufficient material to even '*prima facie*' constitute a case for initiating criminal proceedings against the accused persons, dismissed the application. The court below while making reference to the Supreme Court Judgment in *Indian Oil Corporation case*, reported as **(2006) 6 SCC 736**

that criminal law cannot be used to settle civil disputes or enforce contractual obligations, dismissed the application.

8. On perusal of the complaint which had been dismissed by the learned Magistrate, it appears that he had alleged that trespass was made into his land and that he was assaulted and damage was caused to the cell-phone of his wife, therefore, the application had sufficiently disclosed the commission of the aforesaid offences so as to constitute cognizable offences punishable under BNSS 2023. The learned Magistrate seems to have dismissed the application in view of the pendency of a civil case between the parties before the civil court.

9. It is settled law that the pendency of civil proceedings on the same subject matter has no justification to maintain a criminal action if a ‘*prima facie*’ case exists against the accused persons as criminal and civil remedies can co-exist and are not mutually exclusive.

In **Pratibha Rani v. Suraj Kumar & Anr, (1985) 2 SCC 370**, this Court summed up the distinction between the two remedies as under:

“21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life.

This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

10. The aforesaid view was reiterated by the Apex Court in **‘Kamaladevi Agarwal v. State of W.B. & Ors’**, reported as **(2002) 1 SCC 555**, in para 17, which reads as follows:

“17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even

though higher in status and authority, cannot be made a basis for quashing of the proceedings.”

The Apex Court in the case of **‘K. Jagadish v. Udaya Kumar G.S. and another’**, reported as **(2020) 14 SCC 552** has held in Para-8 as follows:

“8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.”

11. Pendency of civil proceedings on the same subject is no justification to quash criminal proceedings if a *‘prima facie’* case exists against the accused persons, has also been held in a recent judgment of Hon’ble the Supreme Court in the case titled **‘Kathyayini V. Sidharth P. S. Reddy & Ors.’** reported as **2025 INSC 818**. Paragraphs No. 19 of the said judgment, being relevant, is extracted as under:

19. We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of K. Jagadish v. Udaya Kumar G.S. and Another,, this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:

“8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.”

12. In the present case, since offences are disclosed in the complaint made before the learned Magistrate, it would have been in the interest of justice had the learned Magistrate, after application of mind, ordered to register an FIR based on the constitution of the offences and left the matter to the investigating agency. The plea to set the criminal law into motion should not have been scuttled at the very start, particularly, when the complainant had submitted that his complaint was neither entertained by the police nor any action was taken.

13. Since the complaint made by the complainant/petitioner, disclosed the commission of offences of ‘trespass into his land’, ‘criminal assault’ on him and ‘damage caused to the cell phone’ of his wife by the accused, a case was liable to be registered for investigation, so as to bring the accused to justice. The pendency of civil dispute or litigation is no bar to maintain a criminal action as both these remedies can be availed by the complainant. To refuse criminal action on the complaint of the victim, would amount to miscarriage of justice.

14. Having regard to the aforesaid discussion, the petition is allowed. The impugned order passed by the learned Magistrate is set aside and the

SHO, Police Station Akhnoor is directed to register a case for investigation of the matter, on the complaint of the complainant. A copy of this order shall be forwarded to the SHO of the concerned Police Station for compliance.

15. Disposed of, along with connected applications.

(M A Chowdhary)
Judge

JAMMU.
02.09.2025
Raj Kumar

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

