

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 690/2024

AFAQ ALI MALIK AND ORS.

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

Through: Mr. Sheikh Hilal, Advocate

Vs.

STATION HOUSE OFFICER POLICE

STATION KHAG AND ANR

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. Advocate with Ms. Novbahar Khan, AC
Mr. Bilal Ahmad Malik, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

1. Status report has been filed which is on record.
2. Petitioners are seeking quashing of FIR No.73/2024 registered on 05.10.2024 with P/S Khag for offences punishable under Section 74, 329(3), 351(2), 351(3) and 109 of Bharatiya Nyaya Sanhita, 2023 (BNS) by exercising powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Quashment of FIR is being sought primarily on the ground that petitioner no.2 is owner in possession of land measuring 18 Marlas situated at village Habber Tehsil Khag District Budgam; that husband, father-in-law of respondent no.2 and respondent no.2 tried to encroach upon his land and to save the land from encroachment, he filed a civil suit; that while entertaining the suit the civil court passed an interim direction in favour

of petitioner no.2, by virtue of which, defendants therein were restrained from making any interference in his land.

3. Petitioners submit that while suit was pending before the court, respondents, in order to harass petitioners and give civil dispute the colour of being criminal one, lodged impugned FIR against them, in which they have obtained bail. It is also their contention that impugned FIR has been registered on the false and frivolous allegations. The complaint, according to counsel for petitioners, is outcome of the suit filed by the petitioners and interim direction obtained. Impugned FIR has been registered purely out of a motive of vengeance and to pressurize petitioners to leave the land. According to petitioners, allegations are without any basis and impugned FIR has been registered to counter the suit filed by them. Learned counsel for petitioners urges quashing of impugned FIR.

4. Perusal of status report reveals that when complaint of the respondent was investigated, offences were established and consequently chargesheet came to be filed before the court of competent jurisdiction. It is being stated that the instant petition is without any merit as evidence collected during the course of investigation has established the criminal offence committed by petitioners. Thus, according to the counsels for the respondents the powers under Section 528 BNSS, which is *pari materia* to Section 482 of the Old Code of Criminal Procedure, sought for by petitioners, cannot be exercised, *for*, such powers could be exercised only when it is found expedient and necessary to give effect to any order under BNSS or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

5. Perusal of the status report reveals that the complaint/allegations of the complainant that on 02.10.2024, the accused party unlawfully entered her residence, physically assaulted her and tore her clothing (frock), thereby violated her modesty, have on investigation and from the evidence collected, established and after establishment of crime/offences, chargesheet has been filed.

6. After having considered the arguments, grounds taken in petition and Reply, i.e., status report, it becomes, prima facie, clear that FIR in question has rightly been registered because it discloses commission of cognizable offences which are required to be investigated. Worthwhile to mention here that so far as the registration of the FIR is concerned, no fault can be found and it cannot be interfered with, as such.

7. Having regard to the aforesaid discussion, the prayer made by petitioners for quashing impugned FIR is rejected. However, as the chargesheet has already been filed, petitioners, if aggrieved and have a ground, may take legal recourse regarding the same.

8. **Dismissed** along with connected CrIM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
02.05.2025
"Imtiyaz"