

Serial No. 61

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

CRM(M) No.15/2022

Reserved on: 10.07.2026  
Pronounced on: 16.07.2026  
Uploaded on: 16.07.2026  
*Whether the part or full  
judgment is pronounced: Full*

1. **Mohd. Rafiq**, S/O Feroz Din  
R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir
2. Mohd. Aslam, S/O Fazal Hussain  
R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir
3. Mohd. Ilyas, S/O Mohd. Rafiq  
R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir
4. Ghulam Abass, S/O Mohd Rafiq  
R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir
5. Noor Mohd. S/O Raj Mohd.  
R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir

.....Petitioners

Through: Mr. Jasbir Singh Jasrotia, Advocate.  
Mr. Yaseer Farooq Khan, Advocate.

**Vs.**

1. UT of J&K through Incharge  
Police Station Gursai, Poonch.
2. Fareed Ahmed, S/O Jamal Din

R/O Village Gursai Phambranar,  
Teshil Mendhar, District Poonch  
UT of Jammu & Kashmir

..... Respondents

Through: Mr. Eishaan Dadhichi, GA for R-1.  
None for R-2.

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

**JUDGMENT**

1. This petition under Section 482 of the repealed Code of Criminal Procedure (akin to Section 528 of BNSS, 2023) has been filed by the petitioners seeking quashment of FIR No.0104 dated 04.10.2021 registered at Police Gursai, District Poonch, for commission of offences punishable under Sections 458/323/147/504 and 506 IPC, against them on a complaint by respondent No.2.

2. Brief facts, without necessary details, as pleaded by the petitioners are that grandfather of petitioners 1 to 4 and grandfather of respondent No.2 were real brothers, who distributed their property through family settlement and after them, the respective shares of the grandfathers of the petitioners 1 to 4 and respondent No.2 remained with their respective legal heirs; that in the year 2020, the petitioner no.2 handed over the land under Khasra No.2250/2235 to petitioner No.1, and, the petitioner No.1 took possession of the land and started raising construction over the said piece of land under Khasra No.2250/2235; that respondent No.2, much aware of the said arrangement between the petitioners 1 and 2, never objected to it but when the construction started by petitioner no.1 over the said piece of land was almost complete, filed partition suit and obtained status quo order from the court of learned Munsiff, Mendhar vide order dated 05.06.2021 by filing a false and frivolous case against the petitioners, without even impleading petitioner No.2 as necessary party as land in question under Khasra

No.2250/2235 is under his possession; that respondent No.2 started blackmailing the petitioners 1 to 4 for handing over the possession of land and when his nefarious designs did not materialize, he with the connivance of respondent No.1, implicated the petitioners in false and frivolous case vide FIR No.0097 dated 13.09.2021 registered at Police Station Gursai under Section 188 IPC against petitioner No.1, petitioner No.4 and other persons; that respondent No.2 also filed an application under Section 156(3) CrpC before the court of learned Judicial Magistrate 1<sup>st</sup> class Mendhar and get the directions issued to respondent No.1 for registering FIR against the petitioners to settle pending civil dispute with petitioners 1 to 4.

3. The impugned FIR has been assailed on the ground that:

- (i) that the alleged dispute regarding land is purely civil in nature and respondent No.2 has tried to settle the pending partition suit by falsely implicating the petitioners in the criminal proceedings, which are liable to be quashed in view of various decisions of the Supreme Court that any attempt to convert the civil dispute into criminal one is required to be deprecated;
- (ii) that the impugned FIR and the FIR dated 13.09.2021 are lodged only to harass and victimize the petitioners;
- (iii) that the contents of the impugned FIR do not disclose the alleged offences; and
- (iv) that impugned FIR is nothing but an abuse of the process of law and, thus, the impugned FIR does not sustain and is liable to be quashed.

4. Pursuant to notices, status report/objections stand filed on behalf of respondent No.1. Respondent No.2, despite service, has chosen not to appear or file objections, on his behalf.

5. In the objections/status report filed on behalf of respondent No.1-SHO concerned, dismissal of this petition is sought on the ground that this Court cannot appreciate evidence/statements which have been recorded by the Investigating Agency in view of the settled law by Hon'ble the Supreme Court; that the scope of interference by this Court in investigation is very narrow therefore, the powers under Section 482 CrPC are to be exercised very sparingly; that the parameters laid in case 'Ch. Bhajan Lal V. State of Haryana' are not attracted and the matter can be adjudicated only through full dressed trial as the challan in this case has been presented.

6. It is further submitted that on receipt of an application from respondent No.2, with direction by the learned JMIC Mendhar U/S 156(3) CrPC to the SHO concerned to lodge FIR, the impugned FIR was registered against the petitioners and investigation in the above referred FIR was entrusted to HC Javid Ahmed for further proceedings; that in the wake of site plan, statement of witnesses U/S 161 CrPC and other circumstantial evidence, the offences U/S 458/504/206 were found proved against accused namely 1. Mohd. Rafeeq S/O Faroz Din, 2. Mohd. Aslam S/O Fazal Hussain and 3. Noor Mohd S/O Raj Mohd. Gujjar, whereas offence U/S 147/323 were not proved against the above accused and were omitted accordingly; that no offence was found proved against the accused namely 1. Ghulam Abass and 2. Mohd. Alays sons of Mohd. Rafeeq Gujjar, and so, their names were omitted from the instant case; that after completion of

investigation, final report was submitted against the accused persons before competent court of law.

7. Mr. Jasbir Singh Jasrotia, learned counsel appearing for the petitioners argued that the impugned FIR registered against the petitioners is nothing but an attempt by respondent No.2 to settle dispute of civil nature by converting civil litigation already pending before the court of learned Munsiff, Mendhar into a criminal proceedings by falsely implicating the petitioners in a criminal case; that allegations levelled against the petitioners are baseless as petitioner No.1 is a senior citizen aged 65 years who has already undergone two major surgeries and petitioner No.2 cannot walk without stick due to problem in his back since 2019, that petitioner No.5 cannot see through one eye, which is completely damaged; that petitioners no.3 and 4 were not present in Poonch and an attempt was made to implicate them falsely; that in FIR No.0097/2021 registered on 13.09.2021, there was no mention of the incident of 07.09.2019, which shows that respondent no.2 abused the process of law only to put pressure on the petitioners 1 to 4 for settlement of civil dispute by implicating petitioners in false and frivolous criminal cases; that the allegations in the impugned FIR do not disclose the alleged offences. Lastly, it is prayed that the impugned FIR be quashed with all consequential proceedings.

8. Mr. Eishaan Dadhichi, learned Dy. AG appearing for the State argued that the petitioners have raised disputed questions of facts which are serious triable allegations, as such, this court cannot adjudicate upon under its extraordinary jurisdiction. He further submits that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. He further submits that during the course of investigation, no

offence has been proved against petitioners 3 and 4, and they are accordingly deleted from the array of accused, however, offences punishable U/Ss 458/504/206 have been proved against petitioners 1, 2 and 5; that the final report has been laid against the accused persons for judicial determination. Lastly, it is prayed that the petition be dismissed.

9. Heard learned counsel for the parties, considered their submissions and perused the file.

10. Respondent No.2 moved a complaint before the learned Magistrate, Mendhar alleging therein that the accused/petitioners despite status quo order dated 05.06.2021 carried out construction on spot and that on 07.09.2021, they were busy in raising the construction of shop and pucca house in the disputed land over Khasra No.2250/2235 when having no connection with the land in question and when the complainant objected to the aforesaid construction, the accused with criminal intention attacked him and pelted stones and tried to catch hold of him, who ran towards his house to save him. However, while chasing him, the accused entered his house at night at 12:30 and with intention to cause injury, beat the applicant with hooks and kicks and he was saved by some persons from nearby house who rushed on spot, otherwise, he would have been killed; that the assailants openly threatened him using filthy language during the scuffle and that the police concerned at Police Station Gursai and the SSP Poonch did not take action in the matter. As such, it was prayed to take action in the matter. The learned Magistrate, Mendhar directed SHO concerned for lodging an FIR against the accused persons.

11. It is the case of the petitioners herein that the parties have been litigating in a civil suit titled 'Lal Bi & Ors. V. Munir Hussain & Ors' for partition and injunction, which is pending before the court of learned Munsiff Mendhar, wherein vide interim order dated 05.06.2021, defendants were directed to maintain status quo, with respect to the suit property. In the suit, filed by the complainant against the defendants including petitioners no.1 and 3, who were defendants no.5 and 10. It was claimed that the land comprising of Khasra No.2250/2235 was owned by Mohd. Aslam (petitioner No.2 herein) and others. Thus, there was essentially a civil dispute between the parties with regard to the partition of the land, before filing of complaint, whereupon impugned FIR was lodged.

12. The Supreme Court in the case 'State of Haryana & Ors. V. Ch. Bhajan Lal & Ors' reported as **1992 0 CrLJ 527**, held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, in that case, the court can exercise its extraordinary power under Article 226 or the inherent powers under Section 482 of the Code. This court in judgment dated 06.11.2020, in a case titled 'Amrik Singh & Ors. V. State of J&K & Anr.' reported as **2021 (1) JKJ 178** deprecated the growing tendency to convert purely civil disputes into criminal cases and that such efforts should be discouraged.

13. It is worthwhile to mention that respondent No.2/complainant, despite service of notice, did not come forward to contest the matter.

14. Having regard to the aforestated discussion and the case law discussed hereinabove and the facts and circumstances of the case, in the considered opinion of this court, this action on the part of the respondents is clearly an abuse of the process of law when the matter is essentially of a civil nature. The inherent jurisdiction of this court has to be exercised very sparingly and cautiously, however, under the given circumstances of the case where there is a clear misuse of the process of law, this court has to step in, to secure the ends of justice. As a result, impugned FIR is found, being a step in misuse of the process of law, is liable to be quashed.

15. Viewed thus, the petition is allowed and the impugned FIR No.0104 dated 04.10.2021 registered at Police Gursai, District Poonch, for commission of offences punishable under Sections 458/323/147/504 and 506 IPC, is hereby ordered to be quashed, alongwith all consequential proceedings.

16. Petition is, accordingly disposed of, as **allowed**, alongwith connected application(s).

(M.A Chowdhary)  
Judge

Jammu:  
16.07.2026  
*Raj kumar*

Whether the order is speaking?  
Whether the order is reportable?

Yes  
Yes