

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

CRM(M) 213/2020
CrIM (762/2020)

ABDUL GANI NAJAR

...Petitioner(s)

Through: Mr. I. A. Sofi, Advocate for Petitioner Nos. 1 to 5.
Mr. Hayat Sikander, Advocate for Petitioner Nos. 6&7.

Vs.

**UNION TERRITORY OF JAMMU
AND KASHMIR THROUGH POLICE
STATION TREHGAM, KUPWARA**

...Respondent(s)

Through: Mr. Faheem Nisar, Shah, GA
Mr. Tabir Hussain, Investigating Officer belt No.
334/KP present in person.

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

26.09.2026

1. Heard the counsel for the parties and examined the case diaries.
2. The present FIR arises out of an incident dated 23rd July 2020. The revenue authorities, comprising the complainant and the Naib Tehsildar, Executive Magistrate 1st Class, Kowari Laderwan, District Kupwara, submitted a written complaint to the SHO of the Police Station concerned, alleging that the petitioners had re-encroached upon land falling under Survey No. 249 of Village Mirhama, recorded in the revenue record as Kachahri land with the classification "Gair Mum kin Rasta".
3. It was alleged in the complaint that the encroachment over the aforesaid survey number had been removed earlier on the same day by the revenue authorities in the presence of the SHO concerned and the field staff. According to the complainant, however, the

petitioners thereafter re-encroached upon a portion of the said land, thereby obstructing the passage used by the residents of Najar Mohalla. On the basis of these allegations, a request was made for registration of an FIR.

4. Ld. counsel for the petitioners contends that the offences under Sections 147 and 447 of the IPC are not made out from the allegations contained in the FIR. It is submitted that the FIR does not contain any specific allegation that the petitioners had constituted an unlawful assembly with the object of committing rioting and, therefore, the essential ingredients of the offence under Section 147 IPC are absent.
5. It is further contended that the petitioners had already instituted a civil suit seeking protection of their property and that the villagers, at whose behest the criminal proceedings are alleged to have been initiated, were attempting to carve out a pathway through the land of the petitioners.
6. Per contra, the counsel for the respondents submits that the matter has been duly investigated and that the material collected during the course of investigation discloses the commission of offences punishable under Sections 147 and 447 IPC.
7. It is further submitted that the civil suit relied upon by the petitioners pertains to land falling under Khasra Nos. 246 and 247 of Village Mirhama, Tehsil Trehgam, District Kupwara, whereas the subject matter of the present FIR related to Khasra No. 249. According to the respondents, the petitioners, under the cover of the aforesaid civil proceedings, sought to encroach upon a public pathway situated over Kahcharai land. It is submitted that the

revenue authorities, while removing the encroachment, were merely discharging their official duties pursuant to directions issued by the competent superior authorities.

8. Learned counsel for the respondents further submits that the investigation conducted thus far has also disclosed the commission of an offence punishable under Section 353 IPC against the petitioners. It is, however, submitted that the said offence had not initially been incorporated by the Investigating Officer.
9. In rebuttal, the counsel for the petitioners submits that the criminal case has been falsely foisted upon them. According to the petitioners, it was they who had approached the superior revenue authorities seeking demarcation of their land. It is contended that, without awaiting such demarcation, the respondents, in connivance with certain villagers who intended to carve out a pathway through the petitioners' land, caused the impugned FIR to be registered.
10. I have heard the counsel for the parties and considered the material on record. At the outset, it deserves to be noticed that the FIR has not been registered at the instance of any private villager. Rather, the occurrence was reported by the revenue authorities themselves. According to the allegations, the revenue authorities had removed the encroachment on the date of the occurrence, but the petitioners thereafter, having allegedly formed an unlawful assembly, re-encroached upon the same land and committed trespass upon the public pathway. Whether the material collected during the course of investigation ultimately establishes the commission of the offences alleged against the petitioners is a matter to be examined by the competent trial court at the appropriate stage.

11. It may also be noticed that, pursuant to the earlier directions passed by this Court, the investigating agency was permitted to continue with the investigation, subject to the condition that the charge-sheet would not be filed without leave of this Court.
12. Learned counsel for the respondents submits that the investigation now stands concluded and the charge-sheet is ready to be presented before the competent trial court. It is further submitted that all defences available to the petitioners may appropriately be raised before the trial court. The submission merits acceptance.
13. The inherent jurisdiction of this Court under Section 482 CrPC to quash an FIR or criminal proceedings is required to be exercised sparingly and in exceptional circumstances. Where the allegations, taken at their face value and considered along with the material collected during investigation, disclose the commission of cognizable offences, this Court would ordinarily refrain from undertaking an assessment of the sufficiency or reliability of the evidence at the stage of considering a petition for quashing. In the present case, the mere pendency of a civil dispute between the petitioners and private respondent Nos. 5 to 8 does not, by itself, establish that the criminal proceedings arising out of the occurrence in question are merely an attempt to give a criminal colour to a civil dispute.
14. Significantly, the civil suit relied upon by the petitioners is pending between the petitioners and the private respondents. Although an order of status quo was passed therein on 2nd July 2020, the said order did not operate against the revenue authorities, who admittedly were not parties to those proceedings. More

importantly, the civil suit concerns land falling under Khasra Nos. 246 and 247, whereas the occurrence giving rise to the present FIR pertains to Khasra No. 249. The latter, according to the revenue record, is recorded as Kahcharai land under the classification “Gair Mum kin Rasta” and is stated to constitute a pathway on the spot.

15. The specific allegation against the petitioners is that they had encroached upon the aforesaid pathway. The encroachment was removed by the revenue officials in the discharge of their official duties. Notwithstanding such removal, the petitioners are alleged to have thereafter trespassed upon the said land and attempted to re-encroach upon it after forming an unlawful assembly.

16. Learned counsel for the petitioners has strenuously contended that the ingredients of the offence punishable under Section 147 IPC are not made out. This Court, however, while exercising jurisdiction under Section 482 CrPC, is not expected to undertake a meticulous examination of the evidence collected during investigation or determine whether such evidence would ultimately be sufficient to frame a charge or secure a conviction. These are matters falling within the domain of the trial court and are required to be considered at the appropriate stage of the proceedings.

17. It is also pertinent to notice that, as is evident from the C.D file produced before this Court, an offence under Section 353 IPC has also been found to be attracted during investigation. The allegation in this regard is that the petitioners obstructed the revenue authorities while they were discharging their official duties in connection with the removal of the encroachment over land falling under Khasra No. 249.

18. The matter has been investigated in detail and, upon completion of the investigation, material is stated to have been collected disclosing the commission of offences punishable under Sections 147, 447 and 353 IPC against the petitioners. At this stage, it would neither be appropriate nor permissible for this Court to embark upon an appreciation of such material as if exercising the jurisdiction of the trial court.

19. The contention that the petitioners had themselves approached the revenue authorities seeking demarcation of the disputed land has also been considered. Nothing has been brought to the notice of this Court, at this stage, to demonstrate that the demarcation sought by the petitioners extended to land falling under Khasra No. 249. On the contrary, the material placed on record indicates that the demarcation proceedings pertain to the land forming the subject matter of the civil suit, namely, Khasra Nos. 246 and 247.

20. The plea of the petitioners that the criminal proceedings have been falsely instituted might have required consideration on a different footing had the FIR been lodged by the private respondents with whom the petitioners are admittedly embroiled in a civil dispute. The position in the present case, however, is materially different. The occurrence was reported by the revenue authorities themselves, who claim to have witnessed the acts forming the subject matter of the FIR while discharging their official functions. No specific allegation of mala fides or abuse of authority has been levelled against the said revenue officials so as to justify interference with the criminal proceedings at this stage.

21. In view of the foregoing discussion, this Court finds no ground warranting exercise of its inherent jurisdiction under Section 482 CrPC for quashing the FIR or the consequential proceedings. The petition is, accordingly, dismissed. The investigating agency shall be at liberty to proceed with the filing of the charge-sheet before the competent court in accordance with law. It is, however, made clear that the petitioners shall be at liberty to raise all pleas and defences available to them before the trial court, including by seeking discharge at the appropriate stage. Any observations made herein are confined to the adjudication of the present petition and shall not prejudice the trial court while considering the matter on its own merits.

(Sanjay Parihar)
Judge

SRINAGAR:
26.09.2026
Shaista-PS

