

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

**CRM(M) No.315/2023  
CrIM No. 772/2023**

**Ghulam Nabi Mir and Others.**

**...Petitioner(s)**

Through: Mr. Sheikh Hilal, Advocate.

**Vs.**

**Station House Officer Police Station  
Khan Sahib Budgam**

**...Respondent(s)**

Through: Mr. Bikramdeep Singh, Dy.AG.

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

**31.08.2026**

1. The petitioners have invoked the inherent jurisdiction of this Court seeking quashment of the criminal proceedings arising out of FIR No. 46 of 2023, primarily on the ground that a dispute essentially civil in nature has been given a criminal colour and that continuation of the criminal proceedings would, therefore, amount to an abuse of the process of law.
2. The case projected by the petitioners is that the impugned FIR owes its origin to a pre-existing civil dispute between the parties concerning land measuring 18 marlas falling under Khasra No. 368 of Village Bugroo. According to the

petitioners, the said land fell to the share of petitioner No. 1 pursuant to a decree passed by the competent civil court in the year 2007, whereafter the corresponding revenue entry came to be recorded in his favour. Petitioner No. 1 claims to have remained in peaceful possession and enjoyment of the said land ever since.

3. It is further pleaded that respondent No. 2, on the strength of an allegedly forged power of attorney and sale deed, asserted a claim over the aforesaid property. The petitioners maintain that they became aware of such claim only when respondent No. 2 instituted civil proceedings in respect of the property. Their case is that, having failed to dislodge petitioner No. 1 from possession through recourse to civil proceedings, respondent No. 2 set the criminal law into motion by concocting an incident and thereby caused registration of the impugned FIR against the petitioners and their family members.

4. The petitioners further contend that the material forming part of the charge-sheet itself acknowledges the claim of petitioner No. 1 over the land in question. On this premise, it is urged that a person asserting ownership and being in settled possession of immovable property cannot, in the facts alleged, be prosecuted for criminal trespass or mischief in relation to the very same property. It is also

urged that settled possession cannot be disturbed except by authority of law and that the criminal proceedings have been initiated merely as a device to overreach and frustrate the pending civil proceedings.

5. Upon consideration of the petition at the initial stage, this Court, by order dated 12 July 2023, stayed the trial arising out of the aforesaid FIR.

6. The respondents have resisted the petition. Their case is that on 30 April 2023 the petitioners unlawfully entered upon the proprietary land of respondent No. 2, damaged the barbed-wire fencing and standing crop and broke open the iron gate erected thereon, thereby causing loss and damage to the property. It is on the basis of this occurrence that FIR No. 46 of 2023 came to be registered. According to the respondents, the matter was duly investigated and, upon completion of investigation, sufficient material was found indicating commission of the alleged offences by the petitioners. It is, therefore, contended that no case for exercise of the inherent jurisdiction of this Court to quash the criminal proceedings is made out.

7. It is further urged on behalf of the respondents that the pleas raised by the petitioners involve seriously disputed questions of fact, particularly in regard to title and

possession over the land, which cannot appropriately be adjudicated in proceedings seeking quashment of a criminal prosecution. It is also contended that neither the investigation has been shown to be tainted nor has any material been placed on record to demonstrate that it was conducted unfairly or improperly. The respondents maintain that respondent No. 2 is the lawful owner of the property and that the petitioners have no right, title or interest therein. According to them, notwithstanding the title claimed by respondent No. 2, the petitioners took the law into their own hands, entered upon the property and caused damage thereto.

8. Learned counsel appearing for the petitioners, placing reliance upon *Mohammad Wajid & Anr. v. State of U.P. & Ors.*, 2023 Live Law (SC) 624, and *R. Nagender Yadav v. State of Telangana*, 2022 Live Law (SC) 1030, submits that the criminal proceedings have their genesis in a purely civil dispute and have been instituted with an oblique motive. It is accordingly urged that permitting such proceedings to continue would amount to an abuse of the process of the Court.
9. Per contra, learned counsel appearing for the respondents submits that the question as to which of the contesting parties has title over the property is a disputed question of

fact incapable of determination in proceedings of the present nature. It is urged that mere pendency of civil litigation between the parties does not, by itself, render the occurrence dated 30 April 2023 fictitious or obliterate the criminality, if any, arising therefrom.

10. Heard learned counsel for the parties and perused the record.

11. In *Mohammad Wajid & Anr. v. State of U.P. & Ors.*, 2023

Live Law (SC) 624, the Hon'ble Supreme Court observed that where an accused invokes the inherent jurisdiction under Section 482 of the Code of Criminal Procedure or the extraordinary jurisdiction under Article 226 of the Constitution seeking quashment of an FIR or criminal proceedings on the ground that the prosecution is manifestly frivolous, vexatious or actuated by an ulterior motive to wreak vengeance, the Court is under an obligation to examine the allegations with greater care and circumspection. In an appropriate case, the Court is not required to confine itself mechanically to the recitals contained in the FIR but may also take into account the attending circumstances emerging from the record.

12. Likewise, in *R. Nagender Yadav v. State of Telangana*,

2022 Live Law (SC) 1030, the Hon'ble Supreme Court considered a matter in which allegations of forgery in

relation to a sale deed were accompanied by civil proceedings seeking cancellation thereof. The Supreme Court, while exercising jurisdiction under Section 482 Cr.P.C., reiterated that although a civil transaction may, in a given case, also disclose criminal ingredients, the Court must nevertheless examine whether a dispute which is essentially civil has merely been clothed with allegations of criminality. Where the civil remedy has already been invoked, resort to criminal proceedings may, depending upon the facts and circumstances of the case, constitute an abuse of the process of law.

13. There can be no quarrel with the proposition that the aforesaid judgments were rendered in the backdrop of their respective facts. Nevertheless, the principle that emerges is that where criminal proceedings are challenged as being manifestly frivolous, vexatious or motivated by personal vengeance, the Court, while exercising jurisdiction under Section 482 Cr.P.C. or Article 226 of the Constitution, is required to examine not only the allegations in isolation but also the surrounding circumstances with due care and circumspection.

14. The reason is evident. Where criminal law is allegedly set in motion for an ulterior purpose, the mere fact that the FIR has been drafted in a manner facially disclosing the

ingredients of an offence cannot invariably conclude the matter. In an appropriate case, the Court is required to look beyond the form of the allegations and examine the circumstances in which the criminal proceedings came to be instituted. Such scrutiny is necessary to ensure that the criminal process is not employed as an instrument of harassment or as a means of settling scores in disputes which properly fall within the domain of civil law.

15. In *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, the Hon'ble Supreme Court delineated the well-recognised categories in which the extraordinary or inherent jurisdiction for quashing criminal proceedings may appropriately be exercised. The question that, therefore, arises for consideration in the present case is whether, having regard to the nature of the accusations, the antecedent civil litigation and the material collected during investigation, sufficient grounds exist for permitting the petitioners to be subjected to a criminal trial.

16. The record reveals that on 30<sup>th</sup> April 2023 respondent No. 2/complainant lodged a written report before the concerned Police Station alleging that she had purchased a parcel of land, fenced the same and erected a gate thereon. The complainant alleged that Ghulam Nabi Mir, Fayaz

Ahmad Mir, Tanveer Ahmad Mir, Ashiq Ahmad and Muzaffar Ahmad had trespassed upon the land, removed the gate and caused damage to the standing crop. It was further alleged that the land formed part of Khasra No. 368 and that mutation in respect thereof stood attested in favour of the complainant.

17. On the basis of these allegations, FIR No. 46 of 2023 came to be registered initially for offences under Sections 427 and 447 IPC. During investigation, the Investigating Officer visited the spot, prepared the site plan, seized pieces of barbed wire and recorded statements of the witnesses. Upon completion of investigation, the Investigating Officer concluded that the petitioners had trespassed upon the land claimed by the complainant, damaged the property and threatened the complainant with dire consequences. Consequently, offences under Sections 447, 427 and 506 IPC were stated to have been established against the petitioners.

18. At this stage, however, an important circumstance emerging from the record requires notice. It is not in dispute that civil litigation concerning the same property was already pending between the parties. One such suit had been instituted by Mst. Fazi seeking injunctive relief and, by order dated 28<sup>th</sup> April 2023, the Court of learned

Munsiff, Budgam, had restrained the complainant and her accomplices from interfering with the suit-schedule property measuring 2 kanals and 13 marlas falling under Khasra No. 368 of Village Bargo, Tehsil Khansahib. The significance of the aforesaid circumstance lies in the chronology of events. The order of restraint was passed on 28<sup>th</sup> April 2023, whereas the occurrence forming the basis of the impugned FIR is alleged to have taken place on 30<sup>th</sup> April 2023, barely two days thereafter. The proximity between the civil court's order and the institution of criminal proceedings is, therefore, a circumstance which cannot altogether be brushed aside while examining the petitioners' plea that the criminal prosecution is a sequel to the subsisting civil dispute.

19. The record further indicates that the petitioners had instituted a separate civil suit asserting possession over land measuring 18 marlas under Khasra No. 368 and alleging interference therein by the complainant. Thus, much before the criminal prosecution is taken to its logical conclusion, competing claims regarding title and possession over the same property were already engaging the attention of the competent civil court.

20. The mere existence of a civil dispute does not, as a proposition of law, bar criminal prosecution where the

allegations independently disclose the commission of a cognizable offence. A transaction or occurrence may possess both civil and criminal facets, and the availability or invocation of a civil remedy cannot by itself afford immunity against prosecution for an otherwise established criminal act. At the same time, the criminal process cannot legitimately be permitted to become an instrument for exerting pressure upon an adversary in a pre-existing property dispute.

21. It is, therefore, necessary to ascertain the real substance of the accusations rather than their mere form. Where the very foundation of an allegation of criminal trespass depends upon a seriously contested question as to possession over immovable property, and where such possession is already the subject matter of civil proceedings and subsisting judicial orders, those circumstances assume considerable significance while examining whether continuation of the criminal prosecution would advance the cause of criminal justice or merely perpetuate an essentially private dispute through the machinery of criminal law. Equally, while undertaking such scrutiny, this Court cannot convert proceedings under Section 482 Cr.P.C. into a trial on title or embark upon an adjudication of disputed questions which properly fall

within the jurisdiction of the civil court. The limited inquiry is whether, upon taking the allegations and the attending circumstances together, continuation of the criminal proceedings is warranted or whether the criminal process has been invoked for a collateral purpose.

22. The incident dated 30.04.2023 has been duly investigated by the Investigating Agency. During the course of investigation, the Investigating Officer visited the spot and seized broken pieces of wire as well as broken pieces of the gate, which are alleged to have been removed and damaged by the petitioners. The investigation further revealed that, at the relevant time, the complainant was in possession and dominion over the land in dispute. The said fact was also verified by the Investigating Officer from the concerned Revenue Agency. The statements of the witnesses recorded during investigation further reveal allegations that the petitioners trespassed upon the property in possession of the complainant, caused damage thereto and extended threats of dire consequences to her.

23. Once the incident dated 30.04.2023 has been investigated and no challenge has been laid to the fairness or manner of such investigation, the mere fact that the question of possession of the parties qua the landed property in dispute is also the subject matter of civil proceedings

cannot, by itself, furnish a ground for quashing the criminal proceedings. Pendency of a civil dispute does not confer upon either party a licence to commit acts which may independently constitute criminal offences. It is the case of the petitioners that orders had been passed by the competent Civil Court in their favour. Even if the petitioners apprehended interference with or violation of the said orders at the hands of the complainant, the remedy available to them was to approach the competent Civil Court for enforcement or implementation thereof in accordance with law. They could not have taken the law into their own hands.

24. The matter may also be viewed from another perspective.

The possibility that the petitioners, under the purported protection of the orders passed by the Civil Court, attempted to interfere with the complainant's possession through the alleged incident dated 30.04.2023, which was resisted by her and ultimately resulted in registration of the FIR, cannot be ruled out at this stage. Whether the allegations are ultimately proved is, however, a matter for trial and cannot appropriately be determined in proceedings seeking quashing of the criminal case.

25. In the aforesaid backdrop, the contention that a purely civil dispute has been given the colour of a criminal

offence does not find support from the material collected during investigation. On the contrary, the material presently available with the Investigating Agency prima facie discloses the commission of offences punishable under Sections 447, 427 and 323 of the Indian Penal Code. The existence of civil proceedings concerning the property does not, in the facts and circumstances of the present case, efface the criminality alleged in respect of the incident dated 30.04.2023.

26. The principles governing exercise of the extraordinary jurisdiction for quashing criminal proceedings have been authoritatively delineated by the Hon'ble Supreme Court in *State of Haryana & Ors. v. Ch. Bhajan Lal & Ors.*, **1992 Supp (1) SCC 335**, wherein illustrative categories of cases warranting interference, either to prevent abuse of the process of law or to secure the ends of justice, have been enumerated. Tested on the touchstone of the aforesaid principles, the petitioners have failed to bring the present case within any of the categories illustratively laid down in *Bhajan Lal* (supra). Rather, the material collected during investigation prima facie discloses sufficient grounds for the criminal proceedings to continue and for the petitioners to face trial in accordance with law. No ground for interference by this Court is, therefore, made

out. The disputed question regarding possession over the landed property is a matter to be adjudicated by the competent Civil Court on the basis of the evidence produced before it. The criminal proceedings arising out of the alleged incident dated 30.04.2023, on the other hand, have to be adjudicated independently on their own merits and on the basis of the evidence led before the competent criminal court. In these circumstances, continuation of the criminal proceedings against the petitioners cannot be said to constitute an abuse of the process of law or of the Court so as to warrant exercise of the extraordinary jurisdiction of this Court for quashing the same. For the reasons recorded hereinabove, this Court finds no merit in the present petition, is accordingly, **dismissed.**

27. Interim direction(s) if any shall stand vacated.

**(Sanjay Parihar)**  
**Judge**

**SRINAGAR:**

31.08.2026

Shaista-PS