

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRMC No. 41/2012

Tajinder Singh, age 47 years
S/o. S. Mohan Singh
Presently posted in the office of
Inspector General of Police, Jammu

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

Through: Ms. Meenakshi Salathia, Adv.

vs

1. Mohd. Shafi S/o. Wali Mohd. R/o.
Kote, Tehsil and District Jammu
2. Shamsheer Chand S/o. Sh. Rattan
Lal, R/o. Kallari Bhalwal, Tehsil and
District, Jammu

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER 31.01.2024

- 1 The petitioner has challenged the complaint filed by the respondents against him alleging commission of offences under Sections 323, 341, 427 and 506 RPC which is stated to be pending before the court of learned Municipal Magistrate, Jammu. Challenge has also been thrown to order dated 09.01.2012 passed by the learned Municipal Magistrate, whereby the Senior Superintendent of Police, Jammu has been directed to register FIR against the petitioner and investigate the matter.
- 2 No one has put in appearance on behalf of the respondents in this case, as a result of which, they have been set *ex parte* in terms of order dated 16.11.2023.
- 3 I have heard learned counsel for the petitioner and perused the record of the case.

4 As per the impugned complaint, vehicle bearing No. JK02AL 7586 belonging to respondent No. 1 that was under the charge of its driver, respondent No. 2, was hired by one Lal Din for carrying fire wood from his land. On 23.11.2011 when the fire wood was being loaded by the labourers in the said vehicle, due to onset of darkness in the evening, the vehicle was left half loaded and the Driver-respondent No. 2 remained inside the vehicle. It has been alleged that during the night intervening 23rd/24th of November, 2011, the Police of Police Station, Gharota raided the vehicle, its possession was taken over, whereafter it was taken to Police Station Gharota. Respondent No. 2 was also taken to the Police Station by the Police. It has been alleged that when respondent No. 1 approached the concerned Police Station on next morning i.e. on 24.11.2011, he was also illegally detained by the Police. It is also alleged that both the respondents/complainants were wrongfully detained in the lockup and tortured by the Police.

5 It is complaint, it is also averred that the respondents/complainants were booked for offences under Sections 6 and 39 of the Forest Act vide FIR No. 80 of 2011 and they were later on bailed out by the court. The vehicle in question was released by the DFO vide his order dated 14.12.2011. According to the respondents/complainants, there was no violation of any provisions of the Forest Act or the Rules, but still they were unnecessarily and illegally booked for the offences under the Forest Act. It has been further submitted that Munshi of Police Station, namely, Mr. Mohd. Yousuf had taken away of Rs. 7800/- from the vehicle and Rs. 5000/- from the personal search of respondent No. 1-complainant and in respect of the same, a separate complaint has been filed against Mr. Yousuf.

6 On the basis of aforesaid allegations, the learned Magistrate directed the Senior Superintendent of Police, Jammu to register an FIR and investigate the case. It seems that the Senior Superintendent of Police instead of investigating the case, has conducted a preliminary verification in the matter. After conducting the preliminary verification, he has submitted a report dated 25.01.2012 before the learned Magistrate. As per the report, the complaint lodged by the respondents against the petitioner is false and frivolous. It has been submitted that the complainants were not wrongfully confined but they were arrested in case FIR No. 80/2011. It has also been submitted that whatever has been done by the petitioner, the same has been done by him in exercise of his official duties and the detention of the respondents has been effected after following the due procedure of law, as such, the same cannot be termed as illegal detention.

7 If we have a look at the averments made in the impugned complaint, it is revealed that the complainants have admitted that FIR No. 80/2011 for offences under the Forest Act was registered against them for transporting and stealing of forest produce. After the investigation of the said FIR, a challan has been laid against the respondents, a copy whereof is on the record of the file. As per the documents which form part of the challan, the respondents have been taken into custody in non-bailable offences and they have been remanded to the police custody by virtue of orders passed by the learned Magistrate. Thus by no stretch of imagination, it can be said that the respondents have been illegally detained by the petitioner. In fact their detention had the sanction of law inasmuch as they were remanded to custody by the orders of the Magistrate. The contents of the challan show that the respondents/complainants were subjected to medical examination,

whereupon they were found to be free from any marks of violence. Thus it cannot be stated that the complainants were illegally detained by the petitioner or that they were tortured in police custody.

8 The action of the petitioner in arresting the respondents or, in seizing the vehicle and the timber loaded thereon, has been undertaken by him in exercise of his official duties. The petitioner, therefore, cannot be prosecuted for the offence of illegally detaining the respondents/complainants as their detention had the sanction of law.

9 What comes to the fore from the perusal of the contents of the impugned complaint and the undisputed documents placed on record by the petitioner, is that the respondents, herein by filing the impugned complaint have resorted to institution of malicious proceedings with an ulterior motive for wrecking vengeance on the petitioner with a view to spite him due to personal grudge because the petitioner was instrumental in booking the complainants in criminal offences leading to their arrest and prosecution.

10 In view of the above, the continuance of criminal proceedings against the petitioner for the acts which he has done in exercise of his official duties in a lawful manner would be nothing but an abuse of process of law and if the Police Officers like the petitioner herein are subjected to such vexatious complaints at the behest of the persons who have been booked in criminal offences, it will definitely have a deleterious effect on the morale of the Police Force and the Investigating Agencies. Therefore, this is a fit case where this Court should exercise its power under Section 482 Cr.P.C. to quash the criminal proceedings initiated against the petitioner on the basis of the impugned complaint.

11 The petition is, accordingly, allowed and the impugned complaint and the proceedings emanating therefrom are quashed.

(SANJAY DHAR)
JUDGE

Jammu
31.01.2024
Rakesh

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

