

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

Reserved on 12.11.2021

Pronounced on 31.01.2022

CRMC No. 194/2012

Satish Khajuria and another

.....Appellant/Petitioner(s)

Through :- Mr. S. S. Nanda, Advocate

v/s

Jagjit Jolly and anr.

.....Respondent(s)

Through :- Mr. Parvinder Singh, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioners have filed the present petition for quashing the criminal proceedings in complaint, titled "Jagjit Jolly Vs. Mubarak Singh and others" pending before the court of Sub-Registrar, Judicial Magistrate 1st Class Jammu and the order dated 30.06.2012 by virtue of which process has been issued against the petitioners.

2. It is submitted that petitioner No.1 was working as a Chief Khilafwarzi Officer and petitioner No. 2 was working as Building Officer with Jammu Municipal Corporation in the year 2010. The respondent No. 1 filed a complaint under section 166, 355, 427, 451, 503 read with section 506 of R.P.C before the Court of learned Sub Registrar, Judicial Magistrate 1st Class Jammu

The petitioners have prayed for the quashing of the complainant and also the order dated 30.06.2012 on the following grounds:

- (a) That the perusal of the order shows non-application of the mind by the learned Magistrate as the order does not disclose under which provision of laws, the petitioners have committed the offence.
- (b) That the petitioners are the officers appointed by the Government and they cannot be removed from their offices without the sanction of the Government. The offences alleged to have been committed by the petitioners were while acting or purporting to act in the discharge of their official duties and as such, the learned Magistrate could not have taken the cognizance of the offences except with the previous sanction of the Government. No sanction has been obtained, as such, the order impugned is not sustainable.
- (c) That it was the statutory function of the Commissioner to see that the nuisance was abated. Accordingly action was initiated for removing /abating nuisance. Under section 303 of the Municipal Corporation Act, when the Commissioner is of opinion that there is nuisance on any land or building, he can initiate action in terms of the section. In terms of section 391, no suit or prosecution can be entertained in any Court against the Corporation or against the Commissioner or against any Corporation Officer or other

respondent No.1 was being taken in good faith and admittedly it was an official act and as such in view of section 391 of the Act, the complaint against the petitioners is required to be dismissed.

3. Mr. S S Nanda, learned counsel appearing for the petitioners vehemently reiterated the submissions made in the petition.

4. Mr. Parvinder Singh, learned counsel for the respondents vehemently argued that the petitioners have committed the offence and as such, they are required to be proceeded and punished for commission of the same. He further submitted that there is nothing on record to demonstrate that the petitioners acted under the provisions of section 303 of Municipal Corporation Act and further that the petitioners are not entitled to any protection under the Code of Criminal Procedure.

5. Heard and perused the record.

6. There is no need to narrate the facts of the complainant as the perusal of the order impugned reveals that the learned Magistrate has not mentioned in the order impugned as to the offence for which the process has been issued against the petitioners and on this issue alone the order impugned is required to be set aside. The learned Magistrate seems to have acted in a mechanical manner and without recording his satisfaction that the petitioners have committed a particular offence and are required to be proceeded for the

Magistrate, reported in (1998) 5 SCC 749, where the Apex Court has held as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

7. Thus, on this ground only, the order dated 30.06.2012 passed by Sub-Registrar, Jammu in complaint titled “Jagjit Jolly Vs. Mubarak Singh & Ors” to the extent of issuance of process against the petitioners is set aside and the matter is remanded back to the learned Magistrate for passing fresh orders in accordance with law laid down by Apex court in ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** (supra).

(Rajnish Oswal)
Judge

JAMMU
31.01.2022
Rakesh