

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

Reserved on 09.08.2021  
Pronounced on: 23.08.2021

CRMC No. 460/2015

Subash Chander and others

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

Through: Mr. Pawan Kumar Kundal, Advocate

**vs**

Gian Chand

..... Respondent(s)

Through: None.

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

**JUDGMENT**

1. The present petition has been filed by the petitioners under section 561-A Cr.P.C. (now 482 Cr.P.C.) for quashing of the complaint filed by the respondent against the petitioners under sections 147, 447, 341, 323, 506 and 34 RPC as well as order dated 06.07.2015 by virtue of which the learned 3<sup>rd</sup> Additional Munsiff, Jammu (hereinafter to be referred as the trial court) has issued process against the petitioners.
2. It is stated that the respondent and his son, Rohit Kumar had beaten the petitioner No. 2 on 08.04.2014 when he was watering his crop in the agriculture land adjoining to the house of the respondent. The petitioner No. 2 lodged an FIR bearing No. 265/2014 on 17.07.2014 against the respondent and his son. The Police investigated the

matter and filed the challan against the respondent and his son and the said challan is pending in the court of Sub Registrar, Jammu.

3. It is further stated that the respondent approached the petitioners to compromise the matter as his son wanted to join job and because of the pendency of the aforesaid challan, the character certificate was not being issued. When the petitioners refused to that, the respondent threatened them that he will teach lesson to the petitioners and in order to force the petitioners to compromise with the respondent, he filed the impugned complaint against the petitioners by fabricating false and frivolous story and the learned trial court issued process against the petitioners for commission of offences under sections 447, 341, 323, 506 and 34 RPC.
4. The petitioners have assailed the complaint primarily on the ground that the said complaint has been filed by the respondent just to pressurize the petitioners as the petitioners figure as witnesses in the challan against the respondent and his son. It is further stated that the learned trial court without application of its mind has issued process in a mechanical manner against the petitioners.
5. Mr. Pawan Kumar Kundal, learned counsel for the petitioners reiterated the grounds those have been taken in the petition and the respondent though stands served and counsel on his behalf has filed the power of attorney but has not chosen to appear before the Court. As the matter has been pending since 2015, as such, the same cannot be allowed to remain pending like this.

6. Heard and perused the record.
7. A perusal of the complaint reveals that in para 3 of the complaint it has been stated by the respondent that the accused are having their land adjacent to the land of the complainant/respondent herein and on 04.07.2015 at about 5 PM, the accused persons in connivance with each other while ploughing their land has forcibly broken the boundary of the land of the respondent with their tractor while ploughing the land and have entered the land of the respondent and destroyed the chara crop of the respondent.
8. Further in para 4 of the complaint, it has been stated that the respondent asked the accused persons as to why they have broken the boundary of the his land and forcibly entered and ploughed the land of the respondent, the accused started abusing the respondent and same was objected by the respondent but the accused persons did not allow the respondent to proceed ahead and accused persons 1 and 2 caught hold of the respondent from his neck and started slapping the respondent and other accused persons also caught hold of the respondent and abused with filthy language in furtherance of their common intention.
9. The complaint was filed by the respondent against five persons including three petitioners and one Banta Dass and Panju Dass. Thereafter, the learned trial court vide order dated 06.07.2015, issued process for commission of offences under sections 447, 341, 323, 506 and 34 RPC against the petitioners as well as other accused.

10. A perusal of the complaint reveals that there is no whisper in the complaint as to which of the accused while ploughing the land, has broken the boundary of the land of the respondent and the allegations with regard to the slapping of the respondent have been leveled only against the petitioner Nos. 1 and 2. It is also revealed that the allegation with regard to the commission of any offence by the petitioner No. 3 is only to the extent that of holding the neck of the respondent and using filthy language.
11. The contention of Mr. Kundal is that a false land frivolous complaint has been filed by the respondent just to harass the petitioners as the petitioners figure as witness in the challan that is pending against the respondent and his son.
12. The complaint filed by the respondent is absolutely vague as there is no whisper in the complaint as to which of the accused was driving the tractor on 04.07.2015 at about 5 PM who broke the boundary of the land of the respondent and destroyed the chara crop. There is nothing on record to demonstrate as to when the respondent has reported the matter to the police.
13. It is evident from the record that all the petitioners figures as witnesses in the challan against the respondent as well as his son and there is force in the contention of the petitioners that a vague and misconceived complaint has been filed by the respondent as a counter blast to the FIR that was lodged by the petitioner No. 2 against the respondent and his son.

14. The Apex Court in **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335** has held as under:

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

15. The case of the petitioners squarely fall in the category of cases mentioned at serial No. 7 of the judgment Bhajan Lal’s case (supra) as this Court is of the considered view that a false and frivolous vague complaint has been filed by the respondent just to wreck vengeance with an ulterior motive to harass the petitioners who figure as witnesses in the challan pending against them, as such, the impugned complaint is required to be quashed.
16. For all what has been discussed above, this petition has merit and is allowed. The complaint impugned pending before the trial court titled, Gian Chand vs Subash and others and the consequential proceedings thereof, qua the petitioners are quashed.

**(Rajnish Oswal)**  
**Judge**

**Jammu**  
23.08.2021  
Rakesh

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