

Supplementary Cause List-2
Sr. No. 95

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

Pronounced on: 16.11.2021

**CRMC No. 68/2019
CrIM No. 226/2019 [1/2019]**

Saraf Singh Nag and others

.....Petitioners(s)

Through :- Mr. G.S.Thakur, Advocate.

v/s

State of J&K

.....Respondent(s)

Through :- Mr. Jamrodh Singh, GA.

CORAM: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The petitioners seek quashment of FIR No. 16/2019 registered with Police Station, Reasi under Sections 353, 332, 147 & 506 RPC on the ground that the same is abuse of process of law and that the FIR has been lodged with an ulterior motive for wrecking vengeance upon the petitioners. It is submitted that the FIR in question is not maintainable as Section 128 of the Municipal Act was not adhered to by the concerned agencies before taking the action against them. The time statutorily required to be granted to the 'rehareewalas' was not granted to remove the 'reharees. It is further submitted that in any case the offence under Sections 332 and 353 RPC

can be invoked in case the public servant is deterred from discharging his public duty and it is not made out that such duty was being assigned by the concerned at the time of alleged occurrence.

2. The learned counsel for the petitioners has indeed reiterated the averments contained in the petition during the course of arguments.
3. Mr. Jamrodh Singh, learned GA appearing on behalf of the respondent has argued that the FIR is the result of illegal interference caused by the petitioners to the government officials while they were lawfully discharging their duties. The petitioners did not heed to remove the rehareas which were being managed by the petitioners illegally and instead they resisted their removal from the place. The FIR cannot be quashed as it cannot be said that the lodging of the FIR is in any way abuse of process of law.
4. The court in exercise of its inherent jurisdiction will not lightly quash the FIR unless the same appears to be abuse of process of law. The court can interfere when the averments contained in the FIR on the face of it do not constitute any offence or apparently appear to be absurd or not complying with the statutory requirement, if any.
5. In 2021 SCC Online SC 315 titled 'Neeharika Infrastructure Pvt. Ltd. Vs State of Maharashtra and others' decided on 13.04.2021, the Hon'ble Apex Court has laid down the principles of law keeping in view the earlier judgments with regard to the situations where the inherent powers of the court should be exercised by the High Court in the petitions filed under Section 482 Cr.P.C.

6. The argument raised by the learned counsel for the petitioners is only to the extent that as the provisions of Section 128 of the Municipal Act were not followed by the authorities which pertain to issuance of notice prior to taking of action against the persons concerned, the FIR in question is indeed abuse of process of law. The allegations, as mentioned above, pertain to unlawful interference caused by the petitioners while anti-encroachment drive was being undertaken by the authorities including the police personnel and Tehsildar, Reasi. It is alleged in the FIR No. 16/2019 registered with Police Station, Reasi that the petitioners misbehaved, used vulgar language and caused obstruction in the implementation of the order of the District Magistrate, Reasi, while anti-encroachment drive was initiated against the owners of illegal rehariwala. Therefore, it cannot be argued on behalf of the petitioners that the FIR in question could not be lodged against those persons involved in causing restraint to the public servants who were discharging their official duties. The petitioners had license in their favour and therefore were not required to be removed from their respective places of business is the argument which can be raised by the petitioners during trial in case the challan is to be finally produced against the petitioners after investigation.
7. The other argument raised on behalf of the petitioners that the authorities are not stated to be discharging their official duties and therefore the FIR under Section 353 RPC is not maintainable against the petitioners is without any force. The perusal of the FIR does make out that the authorities were engaged in anti-encroachment drive on the directions of

the District Magistrate on a day of occurrence and were restrained from discharging their official duties by the persons mentioned in the FIR, therefore, it cannot be said that the FIR can be quashed on the ground pleaded by the counsel for the petitioners.

8. In the facts and circumstances of the case, the Court finds no reason to exercise its inherent powers to quash the FIR as pleaded in the present petition.
9. The petition is without merit and is, accordingly, dismissed.

(Puneet Gupta)
Judge

Jammu:
16.11.2021
Pawan Chopra

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

