

(2025) 09 J&K CK 0484
In the Jammu And Kashmir High Court
Case No : CrIM No. 1596 Of 2023

Shakti Devi & Anr

APPELLANT

Vs

Union Territory of Jammu and Kashmir

RESPONDENT

Date of Decision : 11-09-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 447
Land Revenue Act, 1996 — Section 133
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2025) 09 J&K CK 0484

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Aman Bhagotra, P. D. Singh

Final Decision : Allowed

Judgement

Vinod Chatterji Koul, J

1. The present petition has been filed by the petitioners, namely Shakti Devi and Rajat Kesar, seeking quashment of FIR No. 0123/2023 registered at Police Station Jhajjar Kotli, Jammu dated 06.06.2023 for offences punishable under Sections 447 and 34 of the Indian Penal Code (IPC).

2. The FIR in question was registered on the basis of a complaint lodged by the Tehsildar Executive Magistrate 1st Class, Tehsil Dansal, Jammu, alleging trespass on State land measuring 40 Kanals 17 Marlas situated in Khasra Nos. 123-131, Village Suketar, Tehsil Dansal. The complaint details that the said land has been allotted to the Department of Disaster Management, Relief, Rehabilitation and Reconstruction for the construction of POJK Bhawan, and that the petitioners and others were evicted from the land under Section 133 of the Land Revenue Act, 1996 (SMVT) on 28.04.2022. It further alleges that the petitioners have attempted to re-encroach the said land and have used a tractor to prepare the land for cultivation during the Kharif season. The contents of the complaint are as under:

"The Station House Officer, Jhajjar Kotli, Jammu. Subject: Request for registration of FIR under relevant sections against the persons for trespassing state land measuring 40 kanals 17 marlas situated in Khasra Nos. 123-131, Village Suketar, Tehsil Dansal which has been allotted to Dept. of Disaster Management, Relief, Rehabilitation and Reconstruction for construction of POJK Bhawan. Sir, Whereas the Hon'ble Court of J&K in PIL No. 19/2011 and other connected matters titled "

PROFESSOR S.K. BHALLA Vs STATE OF J&K AND OTHERS; GOVT. ORDER NO. 2720-JK (LD) OF 2020 DATED 31.10.2020 from Department of Law Justice and Parilimentary Affairs and Order No. 105-JK (REV) of 2020 dated 02.11.2020 has directed for removal of all encroachments from the STATE LANDS across the UT of J&K in accordance with law; Whereas land measuring 40 Kanals 17 Marlas situated across Khasra Nos. 123-131, Village Suketar, Tehsil Dansal is STATE LAND and all illegal entries on the said land have been expunged from the revenue record in compliance to the aforesaid orders and directions; Whereas the said land was physically retrieved by this office and the encroachers namely Smt. Shakti Devi Wd/o Lt. Om Dutt Kesar, Razat Kesar S/o Lt. Om Dutt Kesar and others were evicted from the spot on 28/04/2022 under Section 133 of Land Revenue Act, 1996 (Smtv) in a joint operation by revenue and police authorities in presence of the undersigned, the then SHO Jhajjar Kotli and the then SDPO Nagrota and the persons mentioned (encroachers) were also warned of strict consequences in case they try to re-encroach the said land again; Whereas a board clearly indicating that the said land is state land was put on the spot in which warnings were also displayed in case of trespassing; Whereas the said land state land has been allotted by the govt. for public purpose in favour of Dept. of Disaster Management, Relief, Rehabilitation and Reconstruction for construction of POJK Bhawan vide office of the Divisional Commissioner Jammu order no. 75-LS/DIVCOM (J) of 2023 dated 10.03.2023. Whereas Assistant Commissioner Relief, Jammu vide letter no. RRCM/Estt/23-24/431-32 dated 03-06-2023 has intimated that some unknown persons are trying to encroach the said land illegally; Whereas the undersigned visited the spot along with staff and found that tractor has been Used over the said land in order to lay foundation for sowing of crops for the upcoming Kharif season; Whereas the field reports suggest that it is the same persons namely Shakti Devi Wd/o Lt. Om Dutt Kesar, Razat Kesar S/o Lt. Om Dutt Kesar and others who are trying to re-encroach the said land already allotted for public purpose. In view of the above facts, it is requested that FIR be registered under relevant sections against the persons who are trespassing state land measuring 40 kanals 17 marlas situated in Khasra no.s 123- 131, Village Suketar, Tehsil Dansal which has been allotted to Dept. of Disaster Management, Relief, Rehabilitation and Reconstruction for construction of POJK Bhawan. Ref No :- TD/OQ/2023-24/169-172 Dated- 05/06/2023.

Dhruv Gupta (JKAS) Tehsildar Dansal, Sd in English. Copy to the:- 1. District Magistrate Jammu for favour of kind information please. 2. Assistant Commissioner Relief, Jammu for favour of kind information please. 3. Sub

Divisional Police Officer, Nagrota for favour of kind information and n/a. On the basis contents of above said complaint, offence U/S 447/34 IPC made out. Hence a case FIR No. 123/2023 U/S 447/34 IPC registered at police station and investigation of the case is entrusted to HC Arshid Hussain No.17/J.

3. The FIR in question registered with the Police Station Jhajjar Kotli is sought to be quashed by the petitioner through the medium of this petition, precisely on the following grounds:

(i) that the offences for which the FIR in question has been registered is not even Prima Facie at all made out on the basis of the allegations contained in the FIR and there is no averment made that petitioners had entered into the said land with motive of intimidating, insulting and annoying any person on possession of the said land;

(ii) that since the possession of the said land in question was with the petitioners admittedly on 06.06.2023 and prior thereto, no offence under Section 447 IPC is made out;

(iii) that the allegations are vague and are insufficient to constitute the offence under Section 447 of IPC;

(iv) that respondent No. 3 as alleged that the field report suggests that petitioners have encroached upon the land, however, there is no definite opinion/assertion that they have entered into the said land.

(v) that the FIR is malafide as respondent No. 3 is trying to encroach upon the said land with malafide intention as petitioners have already filed a writ petition bearing No. WP(C) No. 1162/2023 in which the order has been passed whereby it has been ordered that the possession of the petitioners in the land in question, shall not be disturbed without following due course of law.

4. Respondent No. 3 has opposed the petition, contending that the petitioners have criminally trespassed upon State land, and the FIR was rightly registered as the land has been allocated to the Government for public purposes.

5. Heard learned counsel for the parties and perused the record, including the Case Diary.

6. The core issue for determination is whether registration of the FIR amounts to an abuse of the process of law.

7. The complaint and the FIR indicate that the petitioners are only alleged to have attempted re-encroachment. However, there is no specific and direct allegation that the petitioners committed trespass on the land on the date when report was made or thereafter.

8. The Supreme Court in the case of Indian Oil Corporation v. NEPC India Ltd. and others, (2006) 6 SCC 736, has summarized the principles about exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal

proceedings as under:-

"The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692, State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335; Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194, Central Bureau of Investigation v. Duncans Agro Industries Ltd (1996) 5 SCC 591; State of Bihar v. Rajendra Agrawalla (1996) 8 SCC 164, Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd (2000) 3 SCC 269 [pic] Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, M. Krishnan v. Vijay Singh (2001) 8 SCC 645 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out:

(a) purely a civil wrong; or

(b) purely a criminal offence; or

(c) a civil wrong as also a criminal offence.

A commercial transaction or a contractual dispute, apart from furnishing a cause

of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

9. The principles laid down by the Supreme Court are that a complaint can be quashed where allegations made in 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 the case alleged against the accused. For this purpose, complaint has to be examined as a whole, but without examining merits of allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint. A complaint can also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution. The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

10. In a case of Binod Kumar and others v. State of Bihar and another, 2014 (10) SCC 663, the Supreme Court reiterated the principle of law that criminal proceedings are not to be used as a shortcut for civil remedies. The Supreme Court held that even if all the allegations in the complaint taken at the face value were true, the basic essential ingredient of dishonest misappropriation and cheating were missing and that criminal proceedings are not a short cut for other remedies.

11. In the instant case, no specific allegation of trespass has been made against the petitioners in the FIR. The complaint relies on vague and inconclusive field reports suggesting possible re-encroachment but does not aver the actual commission of the offence under Section 447 IPC by the petitioners.

12. The subject matter of the complaint that the land in question is again the subject matter of the writ petition bearing No. WP(C) No. 1162/2023 Shakti Devi and Ors vs. U.T. of J&K and ors., wherein the petitioners feeling aggrieved of the Order No. DCJ/PS/2020-21/4252-83 dated 03.11.2020 passed by the Deputy Commissioner, Jammu and also Order No. 75-LS/DIVCOM(J) of 2023 dated 10.03.2023 passed by the Divisional Commissioner, Jammu, have challenged the same in the said writ petition, whereby the mutation of the petitioners in respect

of the land measuring 20 Kanals 09 Marlas falling under Khasra Nos. 130 and 131 situate at village Suketar, Tehsil Dansal has been cancelled.

13. This Court while issuing notice to the respondents on 08.05.2023 had ordered that meanwhile, subject to objections and till next date before the Bench, possession of the petitioners in the land in question, shall not be disturbed without following due course of law. The said order was passed on 08.05.2023 before the registration of the FIR which has been registered on 06.06.2023.

14. In view of the above, the FIR registered against the petitioners for offence punishable under Sections 447 and 34 IPC is clearly liable to be quashed as it amounts to an abuse of the process of law.

15. Accordingly, the petition is allowed, and FIR No. 0123/2023 registered at Police Station Jhajjar Kotli, Jammu dated 06.06.2023 for offences punishable under Sections 447 and 34 IPC is hereby quashed.