

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**CRM(M) No. 69/2023**

**CrIM No. 159/2023**

Niyaz Ahmad Gabroo and Anr.

...Appellant/Petitioner(s)

Through: Mr. Javid Hamid, Advocate

**Vs.**

Union Territory of J&K and Anr.

...Respondent(s)

Through: Mr. Haaris Khan, Assisting Counsel

**CORAM:**

**HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

**08.05.2026**

- 1.** The petitioners have thrown challenge to FIR No. 06/2023 dated 07.02.2023 registered at Police Station Sheerigarhi, Srinagar, for the alleged commission of offences punishable under Sections 353, 323, 506 and 120-B IPC read with Section 3 of the PPD Act, contending that the impugned FIR is false, frivolous and an abuse of the process of law. It is averred that both the petitioners are employees of the Srinagar Municipal Corporation and are presently posted in Ward No. 30 of the Corporation. Pursuant to judgment dated 27.12.2022 passed by this Court, whereby directions were issued to the Srinagar Municipal Corporation for removal of encroachments from public pathways, streets and lanes, and responsibility was fastened upon the concerned officials for ensuring compliance thereof, the Corporation directed all its officers, including the petitioners, to strictly implement the aforesaid directions. In compliance thereto, the petitioners undertook an anti-encroachment drive and, during inspection of Ward No. 30 near Tagore Hall, Srinagar, noticed a kiosk erected by the Traffic Police on the footpath, which, according to the petitioners, constituted an unauthorized structure causing obstruction and inconvenience to the general public, besides blocking the footpath leading towards LD Hospital, Srinagar. The said structure was accordingly removed by the

petitioners in discharge of their official duties and in furtherance of the directions issued by this Court.

- 2.** It is further pleaded that the officials of the Traffic Police, actuated by mala fide intentions and with a view to deter the petitioners from performing their lawful public duties, got the impugned FIR registered on false and fabricated allegations to the effect that the petitioners had forcibly dismantled the traffic booth by using a JCB machine. It was alleged therein that when the traffic officials objected to the removal of the kiosk and requested the petitioners to desist from the same, the petitioners ignored such requests, abused the officials, obstructed and prevented them in discharge of their official functions and caused damage to the belongings and equipment lying inside the kiosk. On the basis of these allegations, offences under Sections 353, 323, 506 and 120-B IPC read with Section 3 of the PPD Act came to be invoked against the petitioners.
- 3.** The petitioners assert that the kiosk in question was merely shifted and removed from the roadside and footpath strictly in compliance with and in furtherance of the directions issued by this Court in its judgment dated 27.12.2022, and that no offence, as alleged in the impugned FIR, is made out against them.
- 4.** Reliance is placed upon the judgment rendered in **Syed Muiz Qadiri and Ors. vs. Union Territory in CRM(M) No. 119/2022**, wherein the accused persons had been prosecuted for offences under Sections 477, 354 and 506 IPC on the allegations that they had forcibly entered the premises of the trust without lawful authority, harassed the female students, expelled them from the kitchen, mess and dining hall, confined them in a room and outraged the modesty of one of the students, besides threatening the employees of the trust. The accused therein had contended that the action complained of had been undertaken pursuant to eviction proceedings initiated in compliance with the judgment passed by the High Court in *S.K. Bhalla vs. State of J&K and Ors.* While examining the matter a coordinate bench of this Court had held that the accused were government officials acting in discharge of their statutory obligations and in compliance with judicial directions, and that any act performed pursuant to the orders of the

Court could not ordinarily form the basis for criminal prosecution. It was further observed that the allegations levelled in the complaint were vague, omnibus and lacking in specific particulars and, therefore, no criminal prosecution could be sustained against officials acting in their official capacity on the basis of such bald allegations.

5. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in *M.N. Ojha and Ors. vs. Alok Kumar Srivastava and Anr AIR 2010 SC 201*, wherein officials of a Bank were sought to be prosecuted for having initiated recovery proceedings in accordance with the statutory mechanism for recovery of Bank dues. The Hon'ble Supreme Court held that the complainant had abused the process of law with the object of harassing the Bank officials and further held that the order issuing process reflected complete non-application of mind, as the allegations had not been properly scrutinized by the trial Court before taking cognizance.
6. The respondents contend that the petitioners were not legally authorized to initiate criminal action against officials belonging to another organization. They submit that the complainant traffic officials were discharging their lawful public duties relating to traffic regulation and monitoring, for which a traffic kiosk had been established in the area. According to the respondents, the petitioner, along with other officials, removed the said kiosk without issuing any prior notice and, in doing so, obstructed the complainant officials in the performance of their official duties. It is further argued that the matter has already been investigated and sufficient material has been found indicating the commission of an offence by the petitioner. Therefore, the respondents maintain that it would be premature for the Court at this stage to evaluate the evidence or determine whether the petitioner's actions were justified under any judgment or order. They further submit that the petitioner remains at liberty to raise all available legal defences during the course of trial.
7. Upon going through the record of the case, perusing the case diaries and after hearing it appears that the allegations stem from an incident dated 07.02.2023, when ASI Bashir Ahmad, then posted as SO Tagore Hall and performing traffic duties, alleged that a team of officials from

the Srinagar Municipal Corporation (SMC), including the petitioners, had unauthorizedly employed a JCB machine to remove a traffic kiosk installed at the site for regulation of traffic. According to the complainant, the kiosk and the belongings of the traffic officials were damaged during the process. It was further alleged that when the complainant objected to the action, the SMC officials not only ignored his resistance but also threatened him with dire consequences and obstructed him from discharging his official duties. On the basis of these allegations, FIR No. 06/2023 dated 07.02.2023 came to be registered at Police Station Sheerigarhi for offences under Sections 353, 323, 506 and 120-B IPC read with Section 3 of the Prevention of Damage to Public Property Act.

8. The case diaries further reveal that during the course of the initial investigation and recording of witness statements, the complainant additionally alleged that the petitioners had attempted to abduct Constable Aijaz Ahmad No. 228/ T by forcibly taking him into an SMC vehicle when he tried to resist the removal of the kiosk. However, upon investigation, the offence under Section 364 IPC was not found to be made out and the investigating agency concluded that the matter disclosed offences only under Sections 353, 120-B and 506 IPC along with Section 3 of the PPD Act. It is also borne out from the record that further investigation in the matter could not proceed because of the interim stay granted by this Court. During the course of hearing the respondents fairly conceded that both petitioners were serving with the Srinagar Municipal Corporation at the relevant time, one as a Ward Officer and the other as an Assistant Tax Inspector.
9. It is an admitted position that, pursuant to the judgment delivered by the Division Bench of this Court in Jammu Municipal Corporation through Commissioner (A) Municipal Corporation, ***Town Hall Jammu Vs. Mohd. Nadeem and Anr. OWP No. 298/2011***, the Government of the Union Territory of Jammu and Kashmir and its agencies were directed to ensure that no structure of any kind is permitted to exist upon public roads, streets, pathways, lanes, or other public property, and that any such encroachment be removed forthwith. In compliance with the aforesaid directions, the petitioners, along with other municipal

officers, initiated an anti-encroachment drive on 07.02.2023 for removal of alleged illegal constructions raised on the roadside/footpath. During the course of the said exercise, a kiosk alleged to have been obstructing the free movement of pedestrians was removed by the petitioners, who considered the same to be an unauthorized structure erected upon a public footpath, though such allegation has been disputed by the respondents. Nevertheless, it remains undisputed that the petitioners were acting in discharge of their official duties and in furtherance of the directions issued by this Court for removal of illegal encroachments.

**10.** The allegations levelled against the petitioners, even if taken at their face value, do not disclose the commission of any cognizable offence so as to justify continuation of the impugned FIR. The record unequivocally demonstrates that the petitioners, being officials of the Srinagar Municipal Corporation, had undertaken the anti-encroachment drive strictly in discharge of their official duties and in furtherance of the directions issued by the High Court for removal of encroachments from public roads, pathways and footpaths. The removal of the traffic kiosk was, therefore, not an act done in a personal capacity or with any criminal intent, but an administrative action undertaken pursuant to lawful authority. In such circumstances, criminal prosecution against public servants for acts performed bona fide in execution of judicial directions would amount to a clear abuse of the process of law.

**11.** It is well settled that where the allegations contained in the FIR itself reveal that the impugned act was committed in compliance with official duties or judicial orders, the protection available under Section 78 IPC becomes relevant and continuation of criminal proceedings would be wholly unjustified. In *Bapu alias Gujraj Singh vs. State of Rajasthan* 2007 3 SCC 509, the Hon'ble Supreme Court held that acts done pursuant to lawful authority and in good faith cannot ordinarily attract criminal liability. Similarly, in *A.K. Chaudary and Anr. vs. State of Gujarat and Ors* AIR 2010 SC 201, it was held that criminal proceedings arising out of acts performed in discharge of official obligations are liable to be quashed where the essential ingredients of the offences alleged are absent. The Coordinate Bench of this Court in

*Syed Muiz Qadiri and Ors. vs. Union Territory supra* also applied the aforesaid principles and observed that government officials acting pursuant to Court directions for removal of encroachments cannot be subjected to criminal prosecution merely because their official actions are subsequently objected to.

**12.** Likewise, the allegations in the present FIR fail to satisfy the essential ingredients of Section 353 IPC. To constitute an offence under Section 353 IPC, there must be use of assault or criminal force against a public servant with intent to deter him from discharge of his duties. However, the allegations in the FIR merely indicate that the petitioners proceeded with removal of the kiosk despite objections raised by traffic officials. There is no specific allegation of assault, use of criminal force, or any overt act attributable individually to the petitioners so as to attract the offence under Section 353 IPC. Mere resistance or disagreement during execution of official duties cannot ipso facto amount to obstruction punishable under criminal law. Similarly, the allegations regarding criminal conspiracy under Section 120-B IPC are wholly vague and omnibus in nature, as no material has been brought on record to demonstrate any prior meeting of minds or agreement to commit an illegal act.

**13.** The Hon'ble Supreme Court in *M.N. Ojha and Ors. vs. Alok Kumar Srivastava and Anr, supra* deprecated the tendency of initiating criminal proceedings against public officials for acts performed in discharge of statutory functions and held that criminal law cannot be permitted to be used as an instrument of harassment. The Court further observed that where the allegations are manifestly attended with mala fide intention and the criminal process has been set in motion mechanically without proper application of mind, the High Court would be justified in exercising its inherent jurisdiction to prevent abuse of the process of law. The present case squarely falls within the said parameters, as the impugned FIR appears to have been lodged only to intimidate and obstruct the petitioners in performance of their official obligations.

**14.** In view of the aforesaid settled legal position, continuation of the impugned FIR and the consequent investigation against the petitioners

would amount to gross abuse of the process of law. The allegations are inherently improbable, bereft of specific particulars and arise directly out of acts performed by the petitioners in discharge of their official duties pursuant to judicial directions. Therefore, the impugned FIR with consequential proceedings, deserves to be quashed in exercise of the inherent jurisdiction of this Court to secure the ends of justice and prevent misuse of criminal law, accordingly stand *quashed*.

**(SANJAY PARIHAR)**  
**JUDGE**

**SRINAGAR**  
**08.05.2026**  
**Shabroz**

