

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

CRM(M) No. 863/2023
CrlM No. 2176/2023

Kali Dass & Ors.

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

Through: Mr. Umar Javed, Advocate

vs

UT of J&K & Anr.

....Respondent(s)

Through: Mr. Sumit Moza, Advocate

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT
(25.09.2025)

(ORAL)

01. Petitioners have invoked inherent jurisdiction of this Court for quashment of Order dated 15.06.2023, passed by learned Sub Judge, JMJC, Batote [“the trial court”], in an application preferred by the private respondent, in terms of Section 156(3) of Cr.PC and consequent FIR No.90/2023 registered with Police Station, Batote, which culminated in the presentation of charge-sheet against the petitioners in the trial court for offences under Sections 447, 147, 336, 323 & 506 IPC.

02. Before a closer look at the grounds urged in the memo of petition, it shall be expedient to have an overview of the facts of the case.

03. As the prosecution story would unfurl on 15.06.2023, the private respondent namely Rakesh Kumar, preferred an application before the trial court under Sections 156(3) Cr.PC and learned trial court vide impugned Order dated 15.06.2023, directed the concerned Police Station to lodge FIR. It was alleged by the private respondent that he was owner in possession of land falling under

Khasra Nos. 24 and 26. On 27.05.2023, when he was in his land, suddenly all the accused persons (petitioners herein) forcibly entered into his land and started pelting stones and beating him. It was further alleged that the accused/petitioners also pelted stones on his house and tried to damage the life and limb of the complainant, who filed a written complaint to SHO Police Station, Batote on 29.05.2023, but no action was initiated against the petitioners. He approached SSP Ramban, but of no avail. On the receipt of this complaint, learned trial court vide impugned order directed Police Station, Batote to register FIR against the petitioners, which is impugned in the present petition.

04. Petitioners are aggrieved of the impugned order, vide which SHO, Police Station, Batote came to be directed to lodge FIR against the petitioner and the consequent FIR, primarily on the ground that a dispute purely of civil nature is sought to be given a criminal colour, which is not permissible in law. According to the petitioners, even the contents of the impugned FIR do not disclose the commission of any offence against them.

05. Heard learned counsels for the parties and perused the record.

06. The inherent jurisdiction of the High Court, under Section 482 Cr.P.C., now 528 BNSS, no doubt, is broad enough to prevent the abuse of the process of any court or otherwise to secure the ends of justice, however, it is well defined and cannot be exercised in an arbitrary fashion. High Court can exercise inherent jurisdiction only in cases where no legal remedy is available. The very plenitude of the extraordinary or inherent power requires circumspection in its exercise and Court must be careful that its pronouncements are based on sound principles of law. The High Court, while exercising inherent power cannot form an opinion, in a case where generally facts are disputed, incomplete and hazy, more so, when evidence is yet to be collected, and issues involved, factual or

legal, are of such a magnitude, which cannot be seen or analyzed in their true perspective without sufficient material.

07. Learned counsel for the petitioners has argued that private respondent and his brother, namely, Vikas Verma filed a civil suit for permanent prohibitory injunction in the trial court. Initially, an *ex parte* interim order came to be passed in his favour. However, when the said order came to be vacated by the trial court, impugned FIR came to be lodged by the private respondent to wreak vengeance and give criminal colour to a pure civil litigation.

08. Perusal of order dated 29.03.2022, passed by the trial court, which is part of the present petition reflects that learned trial court while vacating the *ex parte* interim injunction against the private respondent came to conclude that since defendant/ petitioner No.1 has right to make construction on his own land without making any sort of damage to the house of plaintiffs, the defendant/petitioner No.1 was directed to file an undertaking before the Court that in case, due to raising of any sort of construction of his house, any damage was caused to the house of the private respondent, he will indemnify the same. It is evident from the aforesaid order that ex-parte interim injunction came to be vacated by the trial court, subject to filing of undertaking by petitioner No.1.

09. There is no quarrel to the settled position of law that criminal law cannot be used as an instrument of oppression in the hands of unscrupulous litigants to settle private vendetta. Nobody can be allowed to make an attempt to stretch the contours of civil disputes to impart it a criminal texture. However, it is equally trite that a complaint disclosing a civil transaction may also have a criminal texture. Given the conspectus of a case, a civil wrong may also have a criminal colour. It is the duty of the High Court to ascertain whether a dispute substantially of civil nature is given a criminal texture or not and the real test is

whether the allegations contained in the complaint/FIR, as the case may be, disclose the commission of a cognizable offence or not.

10. The allegations against the petitioners are that, when private respondent went to his landed property, they started pelting stones and beating him. They also pelted stones at the house of the complainant. The investigating agency, during investigation, not only recorded statement of the complainant but also statements of PWs-Jyoti Devi and Rahul Sharma. PW-Rahul Sharma is an independent witness and all these witnesses have corroborated the prosecution version. The investigating officer also got the demarcation of the land and eventually investigation culminated in the presentation of charge-sheet against the petitioners. The contents of the FIR as also the statement of witnesses, recorded during investigation *prima facie* disclose the commission of offences against the petitioners. This Court, at the stage of exercising inherent jurisdiction under Section 482 Cr.P.C., cannot embark an enquiry or a mini trial as to the genuineness of the allegations.

11. I am fortified in my opinion by ***Somjeet Mallick v. State of Jharkhand & Ors.***; (2024) INSC 772 [SLP (Criminal) No. 6583 of 2024 decided on 14.10.2024], relevant excerpts of the judgment contained in para Nos. 16 & 18, for the facility of reference, are give below:-

“16. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a *prima facie* case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.

17. xxx xxx xxxx

18. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the

gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR”.

12. For what has been observed and discussed above, the present petition, being devoid of merit is dismissed.

13. Interim direction, if any shall stand vacated.

(RAJESH SEKHRI)
JUDGE

Jammu
25.09.2025
Sapna

