

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 778/2021

Mohd. Azad & ors.

.... Petitioner/Appellant(s)

Through:- Mr. Tayyab Javed, Advocate
vice
Mr. H. A. Farooqi, Advocate

V/s

Union Territory of J&K &
ors.

.....Respondent(s)

Through:- Mr. Vishal Bharti, DyAG
Mr. Eishaan Dadhichi, GA

CORAM:HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

24.09.2025

01. FIR No.0382/2021 dated 20.11.2021 registered with Police of Police Station Mendhar for an offence punishable under Section 188 IPC against the petitioners on the complaint filed by the Deputy Custodian Evacuee Property, Poonch, has been called in question through the medium of this petition and the same is sought to be quashed precisely on the ground that the same amounts to abuse of process of law and that violation of order dated 20.11.2021 passed in proceedings and the violation does not constitute an offence under section 188 IPC. The FIR is malicious and has been lodged to wreck vengeance on the petitioners by the Deputy Custodian Evacuee Property, Poonch.

02. In the complaint, on the basis of which the FIR in question has been registered, the allegation is with regard to violation of the order which has been passed by the Custodian Evacuee Property Department, Jammu in proceedings titled *Zulfqar Ahmed Shah vs. Makhana* whereby Zulfqar Ahmed Shah has sought restraint order against Makhana and Custodian Evacuee Property Department, Jammu has passed the following order on 01.05.2015:-

“Presented through counsel. Issue notice to other side and put up on 20.05.2015. In the meanwhile, restrain the non-applicants from interfering or raising any sort of construction in the said land.”

03. Section 188 of IPC deals with disobedience of the orders passed by the Public Authority which reads as under:-

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

04. The order, in respect of which, FIR No.0382/2021 has been registered for an offence punishable under Section 188 IPC, has been passed in proceedings pending before the Custodian Evacuee Property, Department, Jammu. The allegation is with regard to violation of the order passed in proceedings. Disobedience of an order passed by the Presiding Officer in proceedings pending before it cannot attract the provisions of Section 188 IPC. The authority which has passed the order in the proceedings had wrongly approached the police for registration of FIR. The said order has been passed in proceedings initiated before the complainant by Zulfqar Ahmed Shah and if there had been violation of said order, the opposite party ought to have approached the Presiding Officer of the said Court for initiating proceedings for such violation. Here in this case, it is the said Presiding Officer, who had approached the Police.

05. Having regard to the provisions as contained in Section 188 IPC which deals with the disobedience of the order duly promulgated by public servant, the order in respect of which FIR has been registered is concerned would not fall within the purview of such orders because the said order has been passed in proceedings initiated by Zulfqar Ahmed Shah before the Custodian Evacuee Property Department, Jammu against Makhana. In such a situation,

in case there is violation, it is for the Court to proceed in accordance with the provisions of law.

06. The instant FIR has been registered at the instance of Custodian Evacuee Property, for violation of the order passed by him in the proceedings. The procedure, thus, adopted by the Custodian Evacuee Property Department, Jammu, is not supported by any provision of law as disobedience of such order would not fall within the purview of Section 188 IPC.

07. For the reasons stated above, this petition is allowed. The impugned FIR No.0382/2021 dated 20.11.2021 registered with Police of Police Station Mendhar for offence punishable under Section 188 IPC against the petitioners and impugned order dated 20.11.2021, are quashed.


(VINOD CHATTERJI KOUL)
Judge

JAMMU
RAM MURTI/PS
24.09.2025