

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

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CRMC No. 447/2018

Qadeer-Ul-Rehman and Anr.

...Petitioner /Appellant(s)

Through: - Mr. Abhinav Sharma, Sr. Advocate with
Ms. Pariyal Dagyal, Advocate

Vs.

State of J&K and Anr.

...Respondent(s)

Through: - Mr. Bhanu Jasrotia, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
05.10.2026

1. The petitioners, through the medium of the present petition, have challenged FIR No. 117/2018 for offences under Sections 447-A and 427 RPC, registered with Police Station, Thanamandi, pursuant to the directions passed by the learned Judicial Magistrate 1st Class, Thanamandi.
2. It appears that an application was made by respondent No. 2, who is working as a Chowkidar in the Court of Munsiff, Thanamandi, before the Court of the learned Judicial Magistrate 1st Class, Thanamandi, alleging therein that on 06.07.2018 at about 7:00 PM, some unknown persons trespassed into the court complex and carried out demarcation for the purpose of construction of shops. It was also alleged that the said persons damaged the barbed wire and, upon enquiry, it was found

that employees of the Tehsil office and Municipality, Thanamandi, had carried out the demarcation and damaged the barbed wire.

3. On the basis of the aforesaid report, the learned Magistrate issued a direction to the SHO, Police Station, Thanamandi, to lodge an FIR against the Tehsildar, Thanamandi, and the Executive Officer, Municipality, Thanamandi, and to investigate the matter in accordance with law.
4. The petitioners, who happen to be the Tehsildar, Thanamandi, and the Executive Officer, Municipal Committee, Thanamandi, have challenged the impugned FIR lodged pursuant to the directions of the learned Magistrate on the ground that respondent No. 2/complainant did not adhere to the provisions of Sections 154(1) and 154(3) Cr.P.C. before approaching the learned Magistrate. It has been contended that the complainant neither approached the Police Station nor the SSP concerned before filing the application for registration of the FIR before the learned Magistrate. It has also been submitted that the complaint was not supported by any affidavit of the complainant. According to the petitioners, on this ground alone the impugned FIR is liable to be quashed.
5. It has further been contended that the petitioners, on the directions of the SDM, Thanamandi, and the Deputy Commissioner, Rajouri, were required to transfer 04 Marlas and 05 Sarsai of land under Khasra No. 170, situated at Thanamandi, to a private individual, as his land had been acquired for construction of the road from Haspulate to Dhok

under PMGSY. It has been submitted that the petitioners were merely discharging their official functions and, therefore, they cannot be prosecuted.

6. The respondent-Investigating Agency has filed its reply, wherein it has been submitted that, after registration of the FIR, a site plan was prepared and statements of the witnesses under Section 161 Cr.P.C. were recorded. It has also been submitted that during the investigation, revenue record was collected and, as per the revenue record, the land in question is reflected in the name of the Revenue Department, but the same has been in the occupation of the Court since long.
7. I have heard learned counsel for the parties and perused record of the case.
8. The documents placed on record by the petitioners alongwith the petition would reveal that land measuring 4 Kanals and 19 Marlas in Khasra No. 170, situated at Thanamandi, is recorded in the name of the Revenue Department, but the said land is in possession of the Munsiff Court, Thanamandi. It seems that the petitioners, under the directions of the higher officers of the Revenue Department, were asked to hand over land measuring 04 Marlas and 05 Sarsai to one Nadim Ahmed S/o Manzoor Hussain, R/o Village Thana, as his land measuring 04 Marlas and 05 Sarsai under Khasra No. 113, situated at Village Thana, had been acquired for construction of the road from Husplote to Dhoke under PMGSY. The aforesaid directions of the higher officials of the Revenue Department prompted the petitioners to demarcate a portion of

the land in the possession of the Munsiff Court, Thanamandi, which was objected to by the Chowkidar of the Court, who made a complaint before the Presiding Officer of the Court.

9. A perusal of the complaint filed by the Chowkidar before the learned Magistrate would reveal that it is not a complaint under Section 156(3) Cr.P.C. in the strict sense. The Chowkidar had only brought to the notice of the Presiding Officer the attempt of the petitioners to occupy a certain portion of the land, which was under the possession of the Court. There is no prayer in the complaint made by respondent No. 2 before the learned Magistrate for registration of an FIR. The application made by the official to the Presiding Officer of the Court it appears was only an information to a superior officer in administrative capacity. However, the learned Presiding Officer, instead of taking action in the matter on the administrative side by informing the District Judge and the High Court with regard to the alleged attempt to take over a portion of the land in the occupation of the Court, treated the information submitted before him by respondent No. 2 a criminal complaint and directed registration of FIR against the petitioners. The course adopted by the learned Magistrate is not countenanced in law. By issuing directions for registration of an FIR against the petitioners, the learned Magistrate not only flouted the procedure laid down by the Supreme Court in the case of **Priyanka Srivastava and Anr. v. State of U.P. and Others, 2015 (6) SCC 287**, but he also gave a criminal colour to a purely administrative matter.

10. In view of the above, the impugned FIR lodged by respondent No. 1 pursuant to the direction of the Judicial Magistrate 1st Class, Thanamandi, on the basis of the report submitted by respondent No. 2 before the Presiding Officer of the Court, is not sustainable in law. However, the action of the petitioners in trying to occupy a portion of the land, which has admittedly been in the occupation of the Munsiff Court, Thanamandi, for several years, without bringing the matter to the notice of the Presiding Officer of the Court or to the notice of the District Judge, speaks volumes about the high-handedness of the petitioners and their superior officers, for which they need to be dealt with on the administrative side.
11. For what has been discussed hereinabove, while quashing the impugned FIR and the proceedings emanating therefrom against the petitioners, it is provided that the Registrar General of the High Court may take up the matter with the Deputy Commissioner, Rajouri, so that the issue is resolved on the administrative side.

(SANJAY DHAR)
JUDGE

Jammu:
05.10.2026
Karam Chand

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