

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

Reserved on: 14.07.2021  
Pronounced on: 28.07.2021

CRMC No. 15/2014  
IA No. 14/2014

Sheikh Nasser Ahmed

...Petitioner/Applicant(s)

Through :-

Mr. Ajay K. Gandotra, Advocate  
Ms. Sugandha Sawhney, Advocate

v/s

State of J&K and others

.....Respondent (s)

Through :-

Mr. Aseem Sawhney, AAG for Nos. 1  
and 2  
Mr. L. K. Sharma, Sr. Advocate with  
Mr. Mohit Kumar, Advocate for No. 3

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. The present petition has been filed seeking quashing of the criminal challan No. 71/2012, titled, State vs. Sheikh Nissar Ahmed arising of FIR bearing No. 15/2012 of Police Station, Gangyal for commission of offences under sections 448 and 427 RPC pending before the learned JMIC (Munsiff), Jammu and the criminal proceedings pursuant thereof.
2. The petitioner has sought the quashing of the criminal proceedings on the following grounds:
  - (i) That there are glaring contradictions in the prosecution case and the Investigating Officer did not bother to associate the petitioner during the investigation of the FIR so as to ascertain

the correct facts particularly in view of the fact that the petitioner was performing his official duties in the J&K Bank Branch, Rangreth on 04.02.2012 and the office timing was 9.30 AM to 2.00 PM and the petitioner on the said date has passed the payments by remaining present in the branch, as would be evident from the attested copies of Folio No. 22 of the attendance register of the employees of said Bank Branch.

(ii) That the respondent No. 3 through the medium of these criminal proceedings has tried to veil the civil suit with criminal nature as earlier the respondent No. 3 had filed a civil suit against the petitioner and his attorney and the other persons, that is pending before the court of learned City Judge Jammu and when the respondent No. 3 could not succeed in his nefarious designs to grab the property, he initiated the impugned criminal proceedings.

(iii) That the respondent No. 3 has no *locus standi* to lodge the FIR.

3. The response stands filed by the respondent No. 3 in which it is stated that wife of the respondent No. 3 was forced to file a suit against the petitioner with regard to her property and the learned City Judge initially passed the restraint order and subsequently when the petitioner approached the court, the order was modified and the parties were directed to maintain status quo. The petitioner in order to grab the property of the wife of the respondent No. 3, trespassed into the plot of the land and broke the boundary wall, gate and room causing loss of

30,000/- and the petitioner approached the learned Chief Judicial Magistrate, Jammu for investigation of the matter and pursuant to that direction, FIR was registered and after the conclusion of the investigation, the challan for commission of offence under sections 448 and 427 RPC was filed against the petitioner and it is further submitted that false ground has been put forth by the petitioner with regard to his absence on the spot on the date of occurrence as he has manipulated the record being the Senior Officer of the Bank. It is also stated that the civil dispute though cannot be settled by criminal proceedings but it does not give license to the party to the civil proceedings to violate the law and forcibly commit trespass and cause damage to the property during the pendency of the civil litigation. It is also contention of the respondent No. 3 that in a contempt petition filed by the wife of the respondent No. 3 against the petitioner for committing trespass and causing damage to the suit property, the petitioner has not stated in his response that he was in his office at Srinagar on 04.02.2012.

4. The petitioner has placed on record the copy of the complaint filed by respondent No. 3, order passed by the learned CJM, Jammu under section 156(3) Cr.P.C, copy of the FIR, Copy of the challan, copy of the suit and written statements filed by the petitioner along with documents in support thereof and the respondent No. 3 has placed on record the objections filed by the petitioner in the contempt proceedings and also the petition for initiating contempt proceedings against the petitioner and other documents.

5. The brief facts which are necessary for disposal of the present petition are that the petitioner claims to have purchased a plot of land measuring 12 marlas comprising khasra No. 684 min situated at Sunjwa by virtue of Sale Deed executed on 17.07.1996 and thereafter mutation was also attested in his favour. The petitioner has appointed Mr. Ravi Ganjoo as his attorney to look after and manage the above mentioned plot. The petitioner has also obtained the permission for constructing the residential plot from the Jammu Municipal Corporation. The area where the plot situated is now commonly known as Greater Kailash Lane No. 16. Further it is claimed that the respondent No. 3 and his wife, Lata Sharma started raising claim over the plot of the petitioner under the garb of Sale Deed dated 26.03.2010 by virtue of which they claim that the plot measuring 12 marlas has been purchased by wife of respondent No. 3 falling under khasra No. 653 situated at Sunjwa. It is further claimed that the petitioner was given 'nishandehi' in view of the claim of the wife of the respondent No. 3. It is also stated in the petition that the wife of the respondent No. 3 filed a suit for permanent prohibitory injunction with regard to her plot comprising khasra No. 653 against the petitioner and others and the learned City Judge, Jammu initially passed the restraint order and subsequently, the same was modified and the parties were directed to maintain status quo. The petitioner along with Ravi Ganjoo has also filed the written statement on 10.05.2011.
6. The civil suit was filed on 25.04.2011 and the complaint was filed by the respondent No. 3 on 06.02.2012 in which besides narrating about

the litigation pending between the contesting parties, it was also stated that on 04.02.2012 at about 11.30 AM petitioner along with four Sikh young men armed with deadly weapons karpans, kirch forcibly trespassed into the plot of the wife of the complainant, demolished gate, boundary wall and the room with tin roof where household articles of the complainant such as furniture, some utensils, bedding, clothing etc, were lying, causing loss of Rs. 30,000/- and threatened the chowkidar that if did not run away from the plot, he would be killed by them, by brandishing the karpans and kirch. Photographs of the place of the occurrence showing demolished room with tin roof, gat and boundary wall are enclosed.

7. That when the complainant got the information he immediately along with his friends and a relation rushed to the spot and on seeing the complainant the petitioner along with four other persons who were hired by the petitioner ran away from the spot. The complainant who is a retired ex-service man went to the police post Greater Kailash, Jammu but it was to his surprise that all the five accused were sitting in the police post as if they were guests of the police. The complainant lodged the report with the Incharge Police Post Greater Kailash, but the Incharge Police Post, Greater Kailash refused to register the report. It was only with great efforts of the complainant and his relative, when they approached SSP, Jammu and reported him the matter, he directed the police to visit the spot but the police neither registered the FIR nor took any action against them.

8. Pursuant to the filing of the said complaint before the learned Chief Judicial Magistrate, Jammu, learned Magistrate vide order dated 06.02.2012 directed the investigation under section 156(3) Cr.P.C. and pursuant to this FIR was registered. During the investigation of the case, it was found that the petitioner on 04.02.2012 at about 11.30 AM, the petitioner had trespassed the land of the wife of the respondent No. 3 and damaged the boundary wall, gate and the room and other articles and as such, the challan for commission of offences under sections 448 and 427 RPC was filed against the petitioner. However, no complicity of any other person was found and also it was not found that the anyone was there along with weapons.
9. Mr. Ajay K. Gangotra, learned counsel for the petitioner has vehemently argued that the respondent No. 3 has filed the complaint only to harass the petitioner so as to grab his property as also he could not get the property even by filing the civil suit. He further argued that the petitioner was not present on the date of occurrence on spot and was rather present in his office at J&K Bank Branch, Rangreth and further that the respondent No. 3 has no *locus standi* to lodge the FIR.
10. Mr. L. K. Sharma, learned senior counsel appearing for respondent No. 3 has submitted that the plea of alibi cannot be considered while adjudicating upon the petition under section 561-A Cr.P.C. (now 482 Cr.P.C.) and further that the mere pendency of the civil suit cannot operate as a bar with regard to the investigation in the event any offence is committed during the pendency of the said suit. Learned senior counsel has further submitted that there is a report of

commission that the property is in the possession of the wife of the respondent No. 3 and also lays much stress on the photographs placed on record.

11. Heard and perused the record.
12. From the record, it is evident that the parties are litigating with regard to piece of land measuring 12 marlas that that the petitioner claims to have purchased vide Sale Deed dated 17.06.1996 falling under khasra No. 684 min situated at village, Sunjwa whereas the claim of respondent No. 3 is that the said piece of land is 12 marlas falling under khasra No. 653 at village, Sunjwa that has been purchased by his wife. The said dispute is pending before the court of learned City Judge, Jammu. It was during the pendency of the said suit, as per the allegations of the complainant that boundary wall and the room and articles were damaged by the petitioner on 04.02.2012 at around 11.30 AM.
13. It is not the case of the petitioner that one act/transaction has given rise to civil as well as criminal dispute rather from the record, it is evident that during the pendency of the suit between the contesting parties, the petitioner has been alleged to have committed the above mentioned offences.
14. In **Mohd. Allauddin Khan v. State of Bihar, reported in (2019) 6 SCC 107**, the Apex Court has held as under :

“9. First error is that the High Court did not examine the case with a view to find out as to whether the allegations made in the complaint prima facie make out the offences falling under Sections 323 and 379 read with Section 34 IPC or not. Instead the High Court in para 6 gave importance to the fact that since there was a dispute pending between the parties in the civil court in



relation to a shop as being landlord and tenant, it is essentially a civil dispute between the parties. It is on this ground, the High Court proceeded to quash the complaint. This approach of the High Court, in our view, is faulty.

**11.** The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323 and 379 read with Section 34 IPC is made out against Respondents 2 and 3 or not.

**12** The High Court should have seen that when a specific grievance of the appellant in his complaint was that Respondents 2 and 3 have committed the offences punishable under Sections 323 and 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizance is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order [*Prem Prakash Gupta v. State of Bihar*, 2017 SCC OnLine Pat 3618] is legally unsustainable.”

15. So this contention of the petitioner that civil dispute has been converted into a criminal dispute is without any substance as this Court has to go through the allegations levelled against the petitioner in a challan only and also it is not the case that the single act/transaction has given rise to both civil as well as criminal proceedings, as such, this contention deserves to be rejected.
16. The second contention raised by the petitioner is that the petitioner was not present on spot at the date of occurrence. The petitioner can no doubt raise the plea of alibi but the same is required to be proved like any other fact and cannot be considered as a gospel truth and relied upon by this Court while adjudicating upon the petition under section 482 Cr.P.C. The Apex Court in **Rajendra Singh v. State of U.P.**, reported in (2007) 7 SCC 378 has held as under:



“8. That apart, the plea taken by the respondent Kapil Dev Singh in his petition under Section 482 CrPC was that of alibi. Section 103 of the Evidence Act says that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact lie on any particular person. The second illustration to Section 103 reads as under:

“B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it.”

This provision makes it obvious that the burden of establishing the plea of alibi set up by Respondent 2 in the petition filed by him under Section 482 CrPC before the High Court lay squarely upon him. There is hardly any doubt regarding this legal proposition. (See *Gurcharan Singh v. State of Punjab* [AIR 1956 SC 460 : 1956 Cri LJ 827] , *Chandrika Prasad Singh v. State of Bihar* [(1972) 4 SCC 140 : AIR 1972 SC 109] and *State of Haryana v. Sher Singh* [(1981) 2 SCC 300 : 1981 SCC (Cri) 421 : AIR 1981 SC 1021] .) This could be done by leading evidence in the trial and not by filing some affidavits before the High Court. In such a case the prosecution would have got an opportunity to cross-examine those witnesses and demonstrate that their testimony was not correct. Learned counsel for the appellant has submitted that in fact no affidavits were filed in the High Court but what was filed were copies of two or three affidavits which were given by some persons before the Superintendent of Police, Allahabad. Thus, there was absolutely no legal evidence in support of the plea of alibi of Kapil Dev Singh, which the High Court chose to rely upon and accept for the purpose of quashing the order passed by the learned Sessions Judge.

11. Having considered the submissions made by learned counsel for the parties, we are of the opinion that the statements of the witnesses under Section 161 CrPC being wholly inadmissible in evidence could not at all be taken into consideration. The High Court relied upon wholly inadmissible evidence to set aside the order passed by the learned Sessions Judge. That apart, no finding on a plea of alibi can be recorded by the High Court for the first time in a petition under Section 482 CrPC. As mentioned above, the burden to prove the plea of alibi lay upon the accused which he could do by leading evidence in the trial and not by filing some affidavits or statements purported to have been recorded under Section 161 CrPC. The whole procedure adopted by the High Court is clearly illegal and cannot be sustained.”

So this contention too deserves to be rejected.

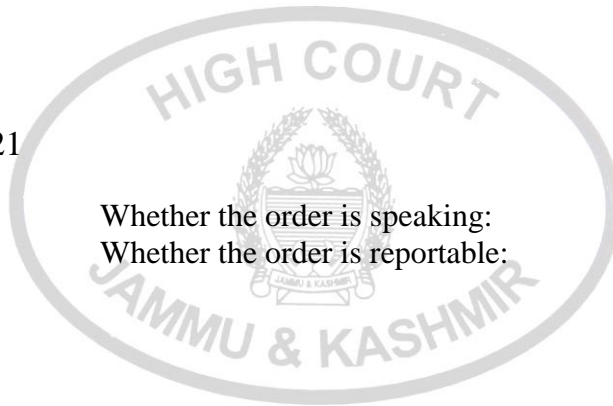
17. The third contention that the respondent No. 3 has no *locus standi* to lodge the FIR is also misconceived. The respondent No. 3 being the

husband of the purchaser of the property has every right to look after and protect the property of his wife and it cannot be said that the respondent No. 3 is absolutely stranger and has got no *locus standi* to lodge FIR. Otherwise also FIR can be lodged by any person(s) who is aware about the commission of any cognizable offence.

18. In view of all what has been discussed above, this petition is found to be devoid of any merit, as such, the same is dismissed. Interim directions stand vacated. Original record, if summoned, be sent back forthwith.

**(RAJNESH OSWAL)**  
**JUDGE**

JAMMU  
28.07.2021  
Rakesh



Whether the order is speaking:  
Whether the order is reportable:

Yes  
No