

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

CRMC No. 10/2018  
IA No. 1/2018

Pronounced on:- 12 .06.2020

Gurbachan Singh and Others ....Petitioner(s)

Through: Mr. Ajay Bakshi, Advocate

**vs.**

Dalip Singh ....Respondent(s)

Through: Mr. Parvinder Singh, Advocate

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

**01.** Petitioners seek quashing of order dated 11.05.2017 passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Akhnoor, holding prima facie their involvement is made out in the commission of offences under sections 145, 500, 298 and 323 RPC and directed to issue process against them on the complaint filed by respondent-Dalip Singh

**02.** The complaint was filed on 04.05.2017, alleging therein that on 14.04.2017 on the eve of Baisakhi festival, the respondent was forced out from Gurudwara Nardiwala by the accused/petitioners, while he was performing religious prayer and on 16.04.2017, the accused again warned the complainant against entering in the Gurudwara. On 18.04.2017, accused persons made an announcement through a speaker that respondent has been socially boycotted from the Biradhari and he is also prohibited to enter in Gurudwara at Village Nardiwala, Tehsil Maira Mandrian.

**03.** The main occurrence is of dated 22.04.2017, which allegedly took place at 12.30 PM when the accused assaulted the complainant as soon as he entered in the Gurudwara where he was invited by Malkiat Singh and Gurdyal Singh on the 4<sup>th</sup> death anniversary of their mother Smt Balwant Kour W/o Lt.

Puran Singh R/o Nardiwala. He was thrashed by the accused mercilessly and, thus, reported the matter to the police, but no action was taken. This is only the reason given to explain the delay of nearly 12 days in filing the complaint.

**04.** Be that as it may, the accused may not have any right to prevent the petitioner from entering into Gurudwara but their announcement was not to injure the religious feeling as there is nothing in the complaint to infer their intention. The allegation of social boycott could be one reason for which he can prove charge under section 500 RPC, but there is no specific allegation to proceed against the accused under Section 298 RPC.

**05.** Since the accused did not say anything about his religious beliefs so it was only to prevent complainant not to come to Gurudwara. The incident is of 22.04.2017 and assault has nothing to do with injuring his religious feelings. The complainant was assaulted and it cannot be related to his religion. It could be simply a case of assault against his entry and no presumption can be drawn, that was interference in his religious belief. His statement is also clear that his status and position in the society has been lowered in the estimate of society. There is not even a whisper in his statement that as to how on 14<sup>th</sup>/16<sup>th</sup> or 18<sup>th</sup> April, 2019, accused tried to injure his religious feeling, so no offence under section 298 RPC is made out and process under section 298 RPC has been wrongly issued. It is also a case of non-application of mind to say that Section 298 RPC is triable by Sessions Judge as it is triable by a Special Judge appointed under Section 259-A Cr.P.C. which prescribes special procedure for trial which has been completely ignored by the Magistrate.

**06.** However, it appears that the trial Court realized its mistake in taking cognizance under Section 298 RPC and referred the matter to the Sessions Judge, who transferred it to Additional Sessions, Judge. Similarly,

section 145 of RPC has absolutely no application to the facts of the case as the complainant has alleged commission of offence punishable under Section 147 RPC which is punishment for rioting.

**07.** This shows non-application of mind by the learned Magistrate. It is, thus, a case of assault causing simple injury and who has caused what injury has not been specified. So while complaint could be continued under sections 500/323 RPC, as such, there was no ground for issuing the process under sections 298 & 147 RPC.

**08.** Thus, the process issued under Sections 298 & 145 RPC is illegal and to that extent, the process is quashed, hence this petition is partly allowed. Offences punishable under Sections 500 & 323 RPC are triable by the Court of Judicial Magistrate 1<sup>st</sup> Class Akhnoor and the Additional Sessions Judge, Jammu shall send the file to the Court of Judicial Magistrate 1<sup>st</sup> Class Akhnoor.

**09.** Since some of the accused persons are very old and most of them are even senior citizens, so the learned Magistrate may exercise his powers to exempt all the senior citizens from personal appearance and will also ensure that the case is disposed of with reasonable dispatch preferably within six months.

**10.** Parties through their counsel will appear before Judicial Magistrate 1<sup>st</sup> Class, Akhnoor on 10.08.2020 except senior citizens on whose behalf their Advocates will seek exemption.

**11.** Disposed of in the terms aforesaid.

**(Sindhu Sharma)**  
**Judge**

**Jammu**  
12.06.2020  
SUNIL-II

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