

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

CRMC No. 101/2014

**Pronounced on:- 12 .06.2020**

Thaker Lal and others

.Petitioner(s)

Through: Mr. O. P. Thakur, Advocate  
and Mr. R. K. S. Thakur, Adv.

**vs.**

Dharam Chand

....Respondent(s)

Through: Mr. Anil Mahajan, Advocate

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

**JUDGMENT**

**01.** This is a fourth round of litigation between the petitioners and the respondent. The case arises from the complaint filed by respondent-Dharam Chand in which the cognizance was taken by the learned Chief Judicial Magistrate, Udhampur. The complaint was filed on 03.05.2008 regarding occurrence that had taken place on the intervening night of 16/17<sup>th</sup> of November, 2007. The delay in filing the complaint is explained on the ground that after the occurrence, he was not feeling well and made a written complaint before the Chief Judicial Magistrate, Udhampur, which he forwarded to the Station House Officer, Udhampur under section 156(3) of Cr.P.C for taking action. A photocopy of the complaint bearing stamp and signatures of the then Chief Judicial Magistrate is annexed with this petition.

**02.** The complainant filed application dated 15.12.2007 in the Court of learned Chief Judicial Magistrate, Udhampur, who directed In-

charge Police Station, Udhampur to file status report. It also bears the stamps of the then Chief Judicial Magistrate and his signatures.

**03.** Another application was filed by the complainant on 08.02.2008 before the learned Chief Judicial Magistrate, the copy of which was also forwarded to the In-charge Police Station, Udhampur for submission of report, it also bears the official stamp and signature of the Chief Judicial Magistrate. Statements of the complainant-Dharam Chand and his brother Sham Lal were recorded on 03.08.2008 and the case was adjourned directing the Station House Officer, Udhampur to file status report in respect of complaint dated 20.11.2007.

**04.** After considering the contents of the complaint and statement of the complainant, besides the contents of the police report, the Court took cognizance and issue process under sections 324/404 RPC vide order dated 13.05.2008 against the accused Nos. 1 to 3. This order was challenged under section 561-A bearing No. 114/2008, which was allowed the order dated 13.05.2008, which was quashed by this Court vide order dated 02.04.2009 by directing as under:

“.....I therefore, allow this petition and set aside Order dated 13.5.2008. The Magistrates is directed to consider the matter a fresh on the basis of the material, which is available on the file. He is also required to take into consideration the report of the police. The parties are directed to appear before the trial court on 04.05.2009.”

**05.** The learned Chief Judicial Magistrate, Udhampur vide his order dated 30.06.2009, deferred the issuance of process and instead directed inquiry under section 202 Cr.P.C. This order was also challenged under section 561-A No. 147/2009, but this petition was dismissed by this Court vide order dated 05.10.2009 holding that:

“.....No process has been issued till date against the petitioner and petitioner has no locus to file this petition as he cannot be said in law to be an aggrieved person. After conducting of enquiry u/s 202 Cr.P.C the Id. Judicial Magistrate has to consider the report and if he comes to the conclusion that there is material and evidence available for issuance of process, thereafter cause may accrue to the petitioner for challenging the same in accordance with law.

This petition is accordingly dismissed.”

**06.** The trial Court after hearing the counsel for the complainant vide order dated 19.10.2009, directed as under:

“.....Prima facie there is sufficient ground to proceed against the accused for the commission of offences u/s 452, 323 and 426 RPC. The accused be summoned. Put up on 11.11.09.”

**07.** The aforesaid order was also challenged by the petitioners in 561-A No. 46/2010 and this petition was allowed by this Court vide order dated 01.08.2013, para 15 of which is reproduced below:

“15. In the given circumstances, this petition is allowed. Order passed on 19.10.2009 by learned Chief Judicial Magistrate, Udhampur, in File No: 7/Complaint filed by respondent is set aside. Learned Chief Judicial Magistrate, Udhampur, shall hear the parties afresh and consider the matter in terms of order passed by this court on 2.4.2009, on the material available on file, on that date, as also report of the police and pass fresh orders. Learned Chief Judicial Magistrate Udhampur, shall ignore report of the subordinate magistrate.”

**08.** The Chief Judicial Magistrate, Udhampur had, thus, to consider the materials available as on 02.04.2009, including Police report dated 06.05.2008, and the matter was reconsidered by the Trial Court after hearing the counsels for the complaint. He took cognizance of the offences and issued process under sections 452/323/504/506 and section 147 of the RPC.

**09.** In this petition, the petitioners have sought quashing of the order dated 13.12.2013, on the ground that the trial Court has not taken into consideration the police report stating that the complaint filed by the respondent is counter blast and the allegations are false because on the report of Pawan Kumar s/o Thaker Lal, a case has been registered regarding the occurrence that took place on the mid night of 16/17<sup>th</sup> of November, 2007 and respondent-Dharam Chand, Chanchla Devi-wife and his Son-Chetan Sharma have been charged under sections 341/323/326/34 RPC by order dated 03.05.2008. Moreover, earlier the cognizance was taken by the Trial Court only under sections 323 and 504 RPC against the accused Nos. 1 to 3. But now all the accused persons have been summoned after the cognizance was taken.

**10.** Since taking cognizance of the complaint is a judicial order and the learned CJM has considered the allegations made in the complaint and the statements of the complainant and one witness, recorded prior to 02.04.2008, therefore, no fault can be found with the taking of the cognizance and issue of process. The main grievance of the petitioners is that it is a counter blast. However, considering the fact that the Dharam Chand, filed the complaint on 20.11.2007 in the Court of learned Chief Judicial Magistrate, Udhampur, which was forwarded to Station House Officer concerned under section 156(3) Cr.P.C and the complainant again approached the Court on 15.12.2007 that the police has not taken any action which was also sent by the trial Court to the In-charge Police Station, Udhampur for report but no report was filed by the Police. Not only this, he again filed an application on 08.02.2008, complaining that no action was taken on his earlier complaint which was

also forwarded to In-charge Police Station, Udhampur for report. All these applications have been drafted by Bodh Raj Gupta-petition writer. If there is any doubt about their genuineness he alone can explain otherwise the signatures of the trial Court and the official stamp shows that the complainant was pursuing the matter vigorously. The original complaint has also been drafted by Bodh Raj Gupta-petition writer. The SHO in his report stated that it was never received by him. The complainant states that he gave the same personally, who is right, is a matter of appreciation.

11. But a very important aspect of the case is that the cause of occurrence is admitted and the parties in both the cases are same, the time of occurrence is midnight. The only question is whether the occurrence took place as alleged by the police or as per the complaint at his house. There are all matters of appreciation of evidence of the witnesses. The occurrence has taken place but what is the cause of its origin can be decided only after evidence is produced. So there is substance in the case but the question is which Court has to try the case.

12. The Hon'ble the Supreme Court in case titled, '**Kewal Krishan V. Suraj Bhan and another**', reported as AIR 1980 SC 1780 has been pleased to hold in para 8 as under:

“8. So far as the three Revenue Officers, named as co-accused in the complaint are concerned, there was absolutely no ground to proceed against them. Similarly, so far as the accused who were allottees of the land are concerned, the order of the Magistrate dismissing the complaint against them is also unassailable. The only debatable question is: Whether the Magistrate should have summarily dismissed the complaint under Section 203, Criminal Procedure Code against Suraj Bhan accused. The witnesses examined under Sections

200 and 202 in the preliminary inquiry did state that it was Suraj Bhan who had shot dead Banta Singh and had also caused the serious gun-shot injury to Kewal Krishan, complainant. The question as to in what circumstances, Banta Singh received the fatal gun-shot injuries, was in issue in the cross-case also, which was instituted on a police report under Section 173, Criminal Procedure Code against Kewal Krishan and others, and had been committed to the Court of Session for trial, That is to say, the story set up by Kewal Krishan in his complaint in regard to the death of Banta Singh, was likely to be his defence version in the counter-case in which he was being tried for the murder of Banta Singh. In short, both these cases exclusively triable by the Court of Session, one instituted on a police report under Section 173, Criminal Procedure Code and the other initiated on a criminal complaint, arose out of the same transaction. There was thus a risk of two courts coming to conflicting findings. To obviate such a risk, it is ordinarily desirable that the two cases should be tried separately but by the same Court. If any authority is needed, reference may be made to Bannappa; AIR 1944 Bom 146; Judhister; 27 Cal WN 700; AIR 1923 Cal 644 and Periaswami, 1937 Mad WN 998.”

**13.** So far as the delay is concerned, it is not on the part of the complainant, he has explained the delay by filing the copies of the complaint and the applications submitted from time to time. It is a matter of appreciation of evidence as to which party was aggressor and who was the aggrieved party.

**14.** From the facts and circumstances of the case, it is prima facie clear that the parties had quarreled on the mid night of 16/17<sup>th</sup> of November, 2007 and the issue involved was whether on that night, soil was being dumped near the new house constructed by the complainant or in the Sangoor Nallah.

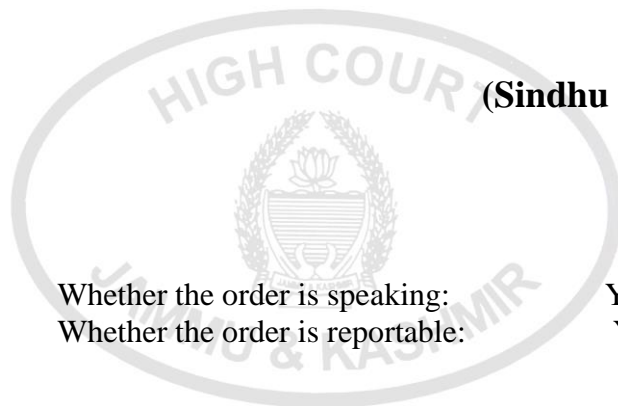
15. It is not a very serious matter, as such, dispute often taken place in a congested area. It is strange to find that the accused party was cleaning septic tank at mid night may be so to avoid nuisance to the public that such time was fixed.

16. Be that as it may, the occurrence cannot be disputed and it is a matter of appreciation of evidence which is involved. In view of the aforesaid discussion, there is no merit in this petition which is accordingly dismissed.

17. Counsel for the parties will ensure the presence of their parties before the Trial Court on the next date of hearing i.e., 10.08.2020.

18. Let the Record of the court below be remitted back forthwith.

**Jammu**  
12 .06.2020  
SUNIL-II



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

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

Yes  
Yes