



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

CRMC No. 404/2013

Reserved on: 10.03.2026

Pronounced on: 25.03.2026

Uploaded on: 25.03.2026

Whether the operative part or full
judgment is pronounced: Full

Babu Ram and others Petitioner (s)

Through :- Mr. Rohit Sharma Advocate.

V/s

Kewal KrishanRespondent(s)

Through :- Mr Anuj Dewain Raina Advocate.

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

JUDGMENT

1. The petitioners, through the medium of present petition, have challenged complaint filed by the respondent-complainant against them alleging commission of offences under Sections 451,323,504, 506 & 34 RPC, which is stated to be pending before the Court of learned Judicial Magistrate Ist Class, Sunderbani (hereinafter referred to as the "trial Magistrate"). Challenge has also been thrown to order dated 18.11.2013 passed by the learned trial Magistrate whereby, after recording satisfaction that offences under Sections 451, 323, 504, 506 & 34 RPC are made out against the petitioners, process has been issued against them.

2. As per the allegations made in the impugned complaint, on 03.03.2013 at about 7:30 a.m., the petitioners/accused forcibly encroached upon the land belonging to the respondent-complainant, which is comprised in Khasra No. 1161 measuring 14 kanals and 8 marlas, situated at village Siot,



Tehsil, Sunderbani. It is alleged in the complaint that when the respondent-complainant resisted the encroachment of the aforesaid land by the petitioners, they entered into the residential house of the respondent-complainant and gave a beating to him with kicks and fists. They also hurled abuses upon the respondent-complainant. It is alleged that some witnesses came on the spot and saved the respondent-complainant from clutches of the petitioners-accused, otherwise, they would have committed his murder.

3. After filing of the complaint, the learned trial Magistrate recorded preliminary evidence of the complainant in the shape of his statement and that of one witness, namely Khem Raj. However, vide order dated 04.03.2013, the learned trial Magistrate, in order to ascertain the truthfulness or otherwise of the allegations made in the complaint, ordered an inquiry in terms of Section 202 of Cr.P.C through SHO Police Station Dharamsaal. Pursuant to the said order, the SHO conducted the inquiry and submitted his report dated 03.04.2013 before the learned trial Magistrate. In the said report, the SHO, after recording the statements of witnesses acquainted with the facts and circumstances of the case, reached a conclusion that the allegations made in the complaint are false and that the complaint has been made to wreak vengeance upon the petitioners with whom the complainant has a long-standing enmity.

4. On 18.05.2013, the learned trial Magistrate considered the inquiry report of the SHO and, after feeling dissatisfied with the same, the Inquiry Officer was directed to undertake a fresh inquiry, record the statements of the eyewitnesses and come up with a fresh report. SHO Police Station, Dharamsaal, the Inquiry Officer, again conducted the inquiry and came up with a report dated 25.06.2013. The Inquiry Officer, after recording statements of the witnesses, again came to the conclusion that the allegations made in the



impugned complaint are based upon falsehood, as the neighbours of the complainant have not deposed anything about the alleged occurrence, even though the complainant and two witnesses, namely Khem Raj and Kewal Kishore, have substantiated the allegations made in the impugned complaint.

5. The second inquiry report was considered by the learned trial Magistrate on 18.11.2013. Upon perusal of the same, and after taking into account the preliminary statements of the complainant and his witness Khem Raj recorded on 04.03.2013, the learned trial Magistrate recorded satisfaction that there are sufficient grounds to proceed against the petitioners/accused and that offences under Sections 451, 323, 504, 506 & 34 RPC are made out against them.

6. The petitioners have challenged the impugned complaint and the impugned order passed by the learned trial Magistrate on the ground that the respondent-complainant has a long-standing civil dispute relating to the land mention whereof is made in the impugned complaint, with the petitioners and, it is only for this reason that the respondent has the launched the criminal prosecution against them. It has been submitted that FIR No. 80/2012 for offences under Sections 341 & 431 RPC was lodged by petitioner No. 1 against the respondent and two witnesses cited in the impugned complaint, namely Suresh Kumar and Khem Raj, and after investigation of the said FIR, challan against the aforesaid three persons stands filed before the Court. According to the petitioners, the impugned complaint has been filed as a counterblast to the criminal proceedings initiated against the respondent and his two witnesses at the instance of petitioner No. 1. It has been further contended that the impugned order passed by the learned trial Magistrate exhibits non-application of mind on his part, inasmuch as the learned trial Magistrate has not carefully



gone through the statements of the witnesses recorded by the Inquiry Officer during the inquiry proceedings.

7. I have heard learned counsel for the parties and perused record of the case, including record of the trial Magistrate.

8. A perusal of record of the trial Magistrate would reveal that, after recording preliminary evidence of the complainant, the learned trial Magistrate, instead of proceeding to issue process against the petitioners, thought it appropriate to get the matter investigated. Accordingly, on 04.03.2013, a direction in terms of Section 202 Cr.P.C came to be issued by the learned trial Magistrate to SHO Police Station, Dharamsaal to undertake inquiry so as to ascertain truthfulness or otherwise of the allegations made in the impugned complaint. Once the learned trial Magistrate adopted such course, it is to be inferred that he was not fully satisfied about the truthfulness of the allegations made in the impugned complaint. It is only due to this reason that direction for investigation under Section 202 of Cr.PC came to be issued by the learned trial Magistrate.

9. The Inquiry Officer conducted an inquiry on two occasions and on both occasions, he came to the conclusion that the allegations made in the impugned complaint are false and that the said allegations have been levelled by the respondent-complainant against the petitioners with a view to wreak vengeance upon them, as there is a long-standing enmity between the parties. The learned trial Magistrate, after obtaining the two reports of investigation, considered the same and, without collecting any further material, proceeded to record satisfaction that the offences are made out against the petitioners. Accordingly, vide the impugned order dated 18.11.2013, the learned trial Magistrate issued the process against the petitioners. The aforesaid course



adopted by the learned trial Magistrate cannot be countenanced in law for the reason that if the learned trial Magistrate was not sure about the sufficiency of the material to proceed against the petitioners at the time when he ordered investigation under Section 202 of CrPC, then on the basis of the same material he could not have changed his opinion, to record satisfaction that there is sufficient material on record to proceed against the petitioners. Besides the preliminary evidence recorded on 04.03.2013, the only other material that was available with the learned trial Magistrate was the two reports of investigation. Both these reports had raised serious doubts about the truthfulness of the allegations made in the impugned complaint. In the absence of any additional material favouring the case of the complainant, it was not open to the learned trial Magistrate to record satisfaction about the truthfulness of the allegations made in the complaint.

10. The Supreme Court has, in the case of **Shiv Jatia vs. Gian Chand Malick and others,(2024) 4 SCC 289**, while analyzing the legal position as regards the course that is required to be adopted by a Magistrate after directing inquiry under Section 202 CrPC, observed as under:

"18. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by sub-section (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order.

19.It is not the case of the 1st respondent-complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the



learned Magistrate does not say so. The order does not even consider the earlier order dated 15th December 2011 calling for the report under sub-section (1) of Section 202 of the Cr.PC. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons".

11. From the foregoing analysis of legal position, it is clear that once a Magistrate is not satisfied about the sufficiency of material collected by him while recording preliminary evidence, she/he cannot pass an order of summoning the accused at a later stage on the very same material.

12. In the present case as already stated, the learned trial Magistrate has, while issuing process against the petitioners, relied upon the preliminary evidence recorded on 04.03.2013 and the two reports of investigation. The learned trial Magistrate had found the preliminary evidence insufficient for proceeding against the petitioners and the two investigation reports had raised serious doubts about veracity of the allegations made in the impugned complaint. Thus, on the basis of the said material, the learned trial Magistrate could not have passed the impugned order dated 18.11.2013.

13. There is yet another aspect of the matter which is required to be noticed. In the impugned complaint itself, it is mentioned that the petitioners were trying to encroach upon the land measuring 14 kanals and 08 marlas comprised in Khasra No. 1161 situated at village Siot. In the petition, it has been submitted that regarding the same land, petitioner No. 1 had filed an application before the SDM Nowshera seeking a direction that possession of the said land be handed over to him. It has been further submitted that petitioner No. 1 is having a dispute regarding the said land with his brother Khem Raj, who has been cited as a witness in the impugned complaint. Khem



Raj has appointed the respondent-complainant as his attorney to pursue the cases against petitioner No. 1. A certified copy of the Power of Attorney to this effect has been placed on record by the petitioners. The petitioners have also placed on record copies of orders passed by SDM Nowshera in the case filed by him against Khem Raj.

14. The aforesaid documents clearly go on to show that there is a dispute relating to the land in question going on between the petitioners on one side and the respondent along with witness Khem Raj on the other. There is also material on record to show that petitioner No. 1 had lodged an FIR against the respondent and the witnesses cited in the impugned complaint namely Khem Raj and Kewal Kishore, which has culminated in filing of challan against them. The accused in the said challan, it appears, have been acquitted in terms of a decision dated 22.09.2016 passed by the learned Judicial Magistrate Ist Class, Nowshera. Thus, there is sufficient material on record to show that the petitioners and the respondent-complainant are entangled in civil litigation and petitioner No. 1 has implicated the respondent and his associates in a criminal case.

15. It appears that on account of long standing enmity and land dispute between the parties, the respondent-complainant had chosen to file the impugned complaint against the petitioners so as to wreak vengeance upon them. This aspect of the matter gets substantiated from the two investigation reports submitted by the SHO Police Station, Dharamsaal before the learned trial Magistrate. In the said reports, it has been categorically stated that none of the neighbours of the respondent-complainant confirmed happening of the alleged occurrence and it was found by the Inquiry Officer that the complaint has been made by the respondent against the petitioners only on account of



long-standing enmity and that the allegations made therein are factually incorrect.

16. From the aforesaid material on record, there can be no hesitation in coming to the conclusion that the impugned complaint has been filed by the respondent against the petitioners to settle a civil dispute at his terms. Thus, this Court is of the considered view that the respondent, in filing the impugned complaint against the petitioners, has tried to wreak vengeance upon them and it has been done as a counterblast to the FIR lodged by petitioner No. 1 against the respondent and his associates. Hence, continuing the complaint against the petitioners will amount to abuse of process of law. Therefore, a case is made out for quashing the impugned complaint against the petitioners.

17. Accordingly, the petition succeeds and the impugned complaint and the proceedings emanating therefrom are quashed.

(SANJAY DHAR)
JUDGE

Jammu
25.03.2026
Naresh/Secy

Whether order is speaking: Yes

Whether order is reportable: Yes