

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

Reserved on : 26.12.2022

Pronounced on: 10.02.2023

CRM(M) No. 238/2021(O&M)

Abdul Rashid

.....Appellant(s)/Petitioner(s)

Through: Mr. Zulkar Nain Sheikh, Advocate

vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Sandeep Gupta, Advocate for Nos. 3, 5
and 6

Mr. M. Y. Akhnoon, Advocate for No. 4

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

JUDGEMENT

1. The petitioner had filed an application on 14.01.2021 under section 156(3) Code of Criminal Procedure(CrPC) for registration of FIR under sections 323, 341, 420, 409, 452, 506 and 109 IPC read with section 3/25 Arms Act against the respondent Nos. 3 to 6 before the Court of Duty Magistrate, Kishtwar and the learned Munsiff JMIC, Kishtwar vide order dated 14.01.2021 after recording its satisfaction that the complaint reveals the commission of cognizable offences, forwarded the complaint under section 156(3) Cr.P.C. to SHO, Kishtwar to register the FIR under relevant provisions of law. As the SHO concerned did not comply the order passed by the learned Magistrate, the petitioner filed an application for initiation of contempt proceedings against the SHO Police Station, Kishtwar, respondent

No. 2 herein and simultaneously, a prayer was also made for directing the SHO to submit the status report.

2. Notice was issued to respondent No. 2 in the aforesaid contempt petition and the respondent No. 2 filed the status report wherein it was stated that one FIR stands already registered prior to the filing of the complaint by the petitioner under section 156(3) Cr.P.C. and in the said FIR, the son of the complainant, namely, Suhail Ahmed was the accused.
3. The learned Munsiff (JMJC), Kishtwar vide order dated 09.02.2021, dropped the contempt proceedings with the observations that there cannot be two FIRs for the same cause/occurrence except counter FIRs and the grievance of the petitioner by no stretch of imagination is justified as the FIR is already in place and investigation is going on.
4. The petitioner has assailed the order dated 09.02.2021 on the ground that the learned Magistrate has failed to appreciate that the allegations levelled by the petitioner are altogether different vis-a-vis the FIR 11/2021 dated 10.01.2021 registered against the son of the petitioner in which the complainant is Ashiq Hussain-respondent No. 5 herein.
5. Status report has been filed by the respondent No. 1 in which it has been stated that FIR bearing No. 11/2021 was registered against the son of the petitioner and investigation in the said FIR has been finalized as challan and the son of the petitioner along with others figures as an accused in the said challan.
6. Mr. Zulker Nain Sheikh, learned counsel for the petitioner vehemently argued that once the learned Magistrate had ordered the registration of FIR after recording its satisfaction with regard to the commission of cognizable

offences, then the course adopted by the learned Magistrate by observing that with regard to the same occurrence, two FIRs are not permissible, is not in accordance with law particularly when the allegations levelled by the petitioner were different. Mr. Sheikh submits that he has instructions not to press the present petition against the respondent Nos. 3 and 4.

7. Mr. Sandeep Gupta, learned counsel appearing for the respondent Nos. 3, 5 and 6 vehemently argued that in the application filed by the petitioner, there were no allegations against the respondent Nos. 3 and 4 and the said application was filed only after the FIR was registered against the son of the petitioner.
8. Mr. M. Y. Akhoun, learned counsel appearing for respondent No. 4 has reiterated the submissions made by Mr. Sandeep Gupta.
9. Heard and perused the record.
10. It is settled law that there cannot be two FIRs with regard to the same occurrence but there may be different versions of two parties with regard to the same occurrence and in such type of cases, registration of cross FIRs is permissible. Reliance is placed upon the judgment of the Apex Court in ***Surender Kaushik v. State of U.P., (2013) 5 SCC 148*** wherein it has been held as under:

From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292]*, the

prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

11. So far as the instant case is concerned, it is borne from the record that pursuant to the complaint filed by respondent No. 5, FIR bearing No. 11/2021 for commission of offences under sections 447, 147 and 323 IPC has been registered against the five accused including the son and wife of the petitioner after they allegedly and illegally trespassed in the land of respondent No. 5 and assaulted him as well as his wife. The time of occurrence has been shown as 0830 hours. In the complaint filed by the petitioner it is alleged that the respondent Nos. 5 and 6 on 10.01.2021 at 6.00 a.m. armed with sharp edged weapons i.e. axe forcefully trespassed into the land of the petitioner and started cutting trees and binding wire fence on the disputed land. When the petitioner heard the noise of the cutting trees, he woke up and rushed towards the spot along with his son, namely, Amir Suhail. The respondent Nos. 5 and 6 started shouting by using filthy and unparliamentary language and caught hold of his son and started beating him mercilessly and respondent Nos. 5 and 6 told the petitioner that they had been directed to get the possession of the land forcefully and illegally by respondent Nos. 3 and 4. Though there were no allegations regarding commission of any offence by respondent Nos. 3 and 4 who were posted as Naib Tehsildar, Kishtwar and Patwari Halqa Pochhal respectively, but still the Magistrate directed the registration of FIR against the respondent Nos. 3 and 4.

12. Be that as it may, the course adopted by the learned Magistrate while dropping the contempt proceedings vide order dated 09.02.2021 with the observation that FIR is already in place and investigation is going on, is not correct. As already observed above, there may be one version of the complainant and the other by the accused and in such type of situation, the registration of cross FIR is permissible as already observed.
13. In view of the above, it cannot be said that in the instant case, the registration of FIR on the application of the petitioner would amount to registration of second FIR regarding same offence. Rather this Court is of the considered view that the same would be a cross FIR and the registration of the same, is not impermissible under law.
14. Viewed thus, this Court deems it appropriate to set aside the observations made by the learned Magistrate in the order dated 09.02.2021 that the grievance of the petitioner cannot be considered as justified as FIR was already registered. SHO, P/S Kishtwar is directed to register FIR under relevant provisions of law against the respondent Nos. 5 and 6 only. Needless to say that this Court has not made any observation with regard to the correctness of the allegations levelled by the petitioner and it shall be the sole prerogative of the Investigating Officer concerned to arrive at any conclusion after the completion of investigation.
15. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
10.02.2023
Rakesh

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