

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: 561-A no. 156/2009

Date of decision: 11.07.2011

Baldev Raj

v.

Jai Singh and ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

1. Whether approved for Law Journal? **Yes**

2. Whether approved for publication in Press?

Appearing counsel:

For appellant(s): Mr. R. S. Thakur, Advocate

For respondent(s): Mr. G. S. Thakur, Advocate

(Oral)

A complaint under Sections 193, 204, 204-A, 467, 120 and 34 of the Ranbir Panel Code was filed by the complainant, Jai Singh, before the court of competent jurisdiction. It was alleged in the complaint that revenue record of land in respect of the Survey Nos. 165, 166, 167, 168, 172 and 173 of village Chak Ram Chand which was in the cultivating possession of the father of the complainant even prior to 1971 was illegally and with criminal intention mutilated and literally destroyed. The cognizance was taken by the learned Judge and issuance of issue process was deferred and matter was referred for enquiry under Section

202 Cr. P. C. After the enquiry report was submitted learned trial Judge ordered for issuance of process against the petitioners-accused and respondents 2 to 9 vide order dated 4.09.2009. It is this order which is called in question in this petition.

Heard learned counsel for the parties. Considered the matter.

After arguing for a while, when it was brought to the notice of learned counsel for respondents that learned trial Judge while ordering for issuance of process has not referred to material/evidence which would prima facie connect the accused persons with the commission of offence, the learned counsel for the complainant-respondents submitted that sufficient material is available on the files of trial court which is sufficient, in law, to warrant for issuance of process against the accused persons.

The order impugned in this petition though spread on seven pages does nowhere state as to which material/evidence would prima facie inculcate the accused persons.

The order issuing the process is order of moment and it affects the valuable rights of a citizen. The right to personal liberty is guaranteed right under Article 21 of the Constitution of India and a person can be deprived of the same in accordance with the procedure established by

law. When process is issued in a criminal complaint and accused persons are directed to furnish bail bond and surety bonds to face the trial, their liberties are abridged. The issuance of an order vide which process is issued thus has to prima facie show that there is material/evidence available on record for adopting such course. Learned trial Judge has to show application of mind. The order need not to be a detailed order, it can be brief but has to be supported by material and reasons.

As already stated and also fairly conceded by learned counsel for the respondent the learned trial Judge has not adverted its attention to the material which was available on record to prima facie connect the accused for commission of alleged offences. The impugned order for this reason cannot be sustained.

This petition is accordingly allowed. Impugned order dated 04.09.2009 is quashed. Learned trial Judge to re-consider the matter in view of the observation made in this order and pass appropriate orders in accordance with law.

(Muzaffar Hussain Attar)
Judge

Jammu
11.07.2011
Paramjeet

