

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

Cr. Rev. No. 76/2012
CrMA No. 66/2012

Date of Order: 26.02.2014

Sanjay Gupta Vs. S. C. Sawhney and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For appellant (s): Mr. S. K. Shukla, Advocate
For respondent (s): Mr. D. C. Raina, Sr. Advocate with
 Mr. Anil Verma, Advocate
 Mr. S. S. Nanda, Advocate
 Mr. Raghu Mehta, Advocate

i)	Whether approved for reporting in Press/Media	:	YES/NO
ii)	Whether approved for reporting in Digest/Journal	:	YES/NO

Through the medium of this revision petition, petitioner (hereinafter referred to as the 'complainant') assails the legality and correctness of order dated 13th October, 2012 passed by the learned Special Municipal Magistrate, Jammu in Complaint file No. 7/Com. titled Sanjay Gupta V Sh. S. C. Sawhney and ors by virtue whereof learned Magistrate declined to issue process

against the respondents (hereinafter referred to as to 'accused') and dismissed the complaint under Section 203 Cr.P.C.

Heard rival sides and perused the record.

It appears that the complainant, claiming to be in possession of a piece of land measuring 882.75 Sft comprised of Khasra No. 330-min situated at Maheshi Gate, Gurudwara Sunder Singh Road Jammu, intended to raise construction on the aforesaid piece of land after obtaining permission from Jammu Municipality in April 2000, which is claimed to have been extended from time to time till 17th September 2011. However, he could not raise construction for certain reasons including a dispute with a neighbor Chaina Ram. In the complaint it was alleged that subordinate officials of accused No.2 committed tress-pass upon the land of the complainant on the intervening night of 22nd/23rd March 2010, removed barbed wire fencing and caused damage to the property. These acts of commission were attributed to the officials of

Municipal Corporation acting under the behest of accused No. 2 Mubarak Singh-the then Commissioner, JMC. It was further alleged in the complaint that JMC Officials again on 19th May 2010, sent men and machinery on spot and leveled the land with the help of JCB. Accused No. 5-Satish Khajuria, Chief Enforcement Officer, Jammu Municipal Corporation is said to have supervised the whole operation. Complainant further alleged that he was threatened with cancellation of building permission. Complainant claims to have filed a civil suit before learned Municipal Magistrate, Jammu who directed the parties to maintain status quo on spot. Complainant also claims to have reported the occurrence to Police Post Residency Road, Jammu which took no action. Accused No. 2 is, alleged to have placed the building permission of the complainant in abeyance vide order dated 26th May 2010 till the dispute between the complainant and Chaina Ram was settled. Complainant claimed that he had settled

the dispute with Chaina Ram and compromise decree was passed by the Court recording the terms of settlement. Thus the decks were cleared for raising construction on the said land as the Civil Court restrained the accused from interfering in the suit land. The interim direction was upheld by Higher Judicial Forums. Meanwhile accused No. 1 had taken over as Commissioner Municipal Corporation from accused No. 2. He too was inimical to complainant and on 26th May 2011 tress-passed on the land of complainant and stopped him from raising construction. Same act was repeated on 29th May 2011 when accused No. 1 alongwith JCB committed tress-pass and removed the building material dumped by the complainant on the land. This operation is alleged to have been supervised by accused No. 5 under the instructions of accused No. 1. Complainant approached the police but since no action was taken, he filed a complaint before learned Magistrate alleging commission of offence under Section 447, 506, 427,

34 read with Section 120-B RPC. Learned Magistrate decided to inquire into the allegations leveled in the complaint under Section 202 CrPC and after conducting inquiry himself, he passed the impugned order, on the basis of a status report filed by accused No. 3, refusing to issue process and dismissed the complaint.

The impugned order is a fairly lengthy order and spells out the reasons that persuaded the Magistrate to decide against issuing of process for securing presence of accused. Learned Magistrate found that no case was made out to proceed against the accused persons. It appears that in arriving at a conclusion that there was no sufficient ground to proceed against the accused, learned Magistrate kept in view all aspects of the matter. Learned Magistrate appears to have not only considered the statement of the witnesses examined during inquiry, but also viewed compact disc displaying the transaction. Learned Magistrate also called for the record from JMC regarding

building permission in favour of the complainant. He also called for a status report from Joint Commissioner Administration. He noticed that the case for building permission was placed before BOCA and the Authority desired the demarcation and title verification of the land. With reference to filing of writ petition 628/2012 by complainant, the Court below noticed that the complainant set up a case of 'deemed permission' in the writ petition whereas exact location of property and Khasra numbers had not been mentioned in the sale deed under which complainant claimed to have purchased the said plot of land. Court below also noticed that the accused claimed the said plot of land as the land belonging to JMC and building permission case could be considered only after title verification from the Revenue Authority. These facts having been noticed by learned Magistrate, he found the complainant's version regarding grabbing of land in question by accused No. 2 in conspiracy with accused persons as groundless and ill-

founded. Learned Magistrate found that the accused were public servants and had acted in conformity with procedure. The Court below arrived at conclusions that object of complainant was to exert pressure on the accused to get his case for building permission cleared by accused. It also noticed that accused No. 2 stood transferred from the post of Municipal Commissioner in 2010 and occurrence alleged to have taken place in 2011 and 2012 could not be linked with him.

It is futile to contend on the part of learned counsel for the complainant that the material brought on record during inquiry justified issue of process by learned Magistrate. Section 202 of CrPC empowers a Magistrate to hold a judicial inquiry himself or direct an inquiry or investigation for the purpose of deciding whether there is sufficient ground for proceeding. The object of postponement of process is to prevent harassment of innocent persons sought to be roped in on the basis of vexatious complaints. It is within the domain of

Magistrate to postpone the issue of process against the accused in order to enable him to hold an enquiry or direct an investigation for ascertaining truth or falsehood of allegations in the complaint. Such discretionary power is unfettered and can be resorted to by Magistrate to arrive at a conclusion whether or not there is sufficient ground for proceeding against the accused. A person nominated as accused in the complaint does not become an accused before issuance of process against him. He is at liberty to participate in the proceedings as a member of the general public if his participation in any capacity is necessary or desirable. If the person against whom complaint is filed happens to be a public servant, there is no rule or law which prohibits any report prepared by him or produced by him before the Court, to be taken into consideration provided process has not been issued against him. Issue of process against a person arrayed as an accused in a complaint is a serious exercise and if an accused happens to be a

public servant, the Magistrate has to be cautious, while deciding about issue of process, that such public servant to whom a ring of protection is afforded by law in regard to discharge of official duties, is not subjected to harassment.

The conclusions derived from the inquiry conducted by the learned Magistrate are not alleged to be perverse. The statutory report relied upon by learned Magistrate does not warrant exclusion from consideration as the same was prepared by a public servant in discharge of his public duty notwithstanding the fact that such a public servant does not figure as accused in the complaint. Once the sale deed ,from which complainant claims to have derived title, was found lacking in description of the property and JMC staked its claim to the plot of land in respect whereof trespass was alleged to have been committed by the accused who were none else other than the officers, officials and functionaries of JMC acting to safeguard the interests of corporation, complainant could not

attribute the acts of omissions and commissions to accused as individuals when they were acting under the color of office and could not be prosecuted without obtaining sanction under Section 197 Cr.P.C. The learned Magistrate acted in conformity with law when he declined to issue process against the accused and dismissed the complaint.

I find no illegality, infirmity or jurisdictional error in the impugned order. There is no merit in this revision petition. Same is, accordingly, dismissed.

(Bansi Lal Bhat)
Judge

Jammu:
26.02.2014
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