

IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR

Reserved on: 02.06.2025
Pronounced on: 06.06.2025

CRM(M) No.267/2022

RAJA ASIF FAROOQ & ANR.

...PETITIONER(S)

Through: - Mr. Prince Hamza, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

*Through: - Mr. Mohsin-ul-Showkat Qadiri, Sr. AAG, with
Mr. Faheem Nisar Shah, GA.*

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

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged FIR No.266/2020 for offences under Section 354 and 447 of IPC registered with Police Staton, Sadder, Srinagar.

2) As per the impugned FIR, on 08.11.2020 at about 3.00 pm, while the complainant was working in her land situated at Bye-pass Hyderpora, the petitioners came over there and they obstructed her from working in her field. It is being alleged that the petitioners hurled abuses upon the prosecutrix and when she objected to it, petitioner No.2, Showkat Ahmad Wani, pushed her, as a result of which the complainant fell down and her headgear also fell down, which amounts to outraging of her modesty.

3) The petitioners have challenged the impugned FIR on the grounds that their predecessor-in-interest and the respondent, who happened to be his sister, were co-owners of the land measuring 01 kanal 15 marlas falling under Survey No.759/59 situated at Hyderpora Srinagar. It has been claimed by the petitioners that after the death of Shri Ghulam Rasool, their predecessor-in-interest, the petitioners being his legal heirs, are in possession of the said land since last so many decades. According to the petitioners, the private respondent, in order to grab the entire land, made an application before the Tehsildar concerned, who directed removal of name of the predecessor-in-interest of the petitioners from the Revenue Record. The said order came to be challenged by the petitioners before the Financial Commissioner, who vide order dated 24.01.2018 set aside the order of the Tehsildar and directed him to effect partition of the land in question. The order of the Tehsildar is stated to have been challenged by the private respondent in a writ petition before this Court and the said writ petition is still pending before this Court.

4) It is further case of the petitioners that the complainant thereafter tried to raise construction on the disputed land in June 2020 but the petitioners filed a civil suit before the Court of Civil Subordinate Judge, Srinagar, CRM(M) No.267/2022

who vide order dated 04.07.2020, passed an interim injunction in favour of the petitioners which is still in operation. In the meanwhile, it came to the notice of the petitioners that the complainant and her daughter have executed a sale deed with regard to the disputed land on 15.05.2020 and the said sale deed was challenged by the petitioners by virtue of another civil suit which is pending before the learned 3rd Additional Munsiff, Srinagar, and the parties have been directed to maintain status quo by the said court.

5) It is being claimed by the petitioners that the complainant has been trying to violate different orders passed by the Civil Courts and even an FIR came to be lodged against the grand children of the complainant in this regard. It is being claimed that the complainant has now lodged the impugned FIR with a view to wreak vengeance upon the petitioners as a counterblast to the aforesaid litigation by giving a criminal colour to a purely civil dispute. It has been further contended that the allegations made in the impugned FIR do not constitute an offence of outraging modesty nor do the same constitute an offence of criminal trespass.

6) The respondent-State has filed objections to the petition in which, besides narrating the allegations made in

the impugned FIR, it has been claimed that during investigation allegations made in the impugned FIR, prima facie, stand established against the petitioners and the charge sheet has been prepared against them.

7) During pendency of the petition, the complainant, who was impleaded as respondent No.5 to the petition, has passed away.

8) I have heard learned counsel for the parties and perused record of the case including the Case Diary.

9) As per the allegations made in the impugned FIR, the petitioners are alleged to have committed two offences, one under Section 354 and the other under Section 447 of IPC. Before determining the question as to whether the aforesaid offences are made out from the allegations made in the impugned FIR and the material collected during investigation of the case, it would be apt to understand the definition of these offences.

10) Section 354 of IPC defines the offence of outraging modesty of a woman. It reads as under:

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than

one year but which may extend to five years, and shall also be liable to fine.

11) From a perusal of the aforesaid provision, it is evident that the offence under Section 354 of IPC is constituted if it is shown that the offender has used criminal force against a woman with an intention to outrage her modesty.

12) Section 349 of IPC defines 'force' and Section 350 of IPC defines 'criminal force'. As per Section 349 of IPC, a person is said to use force to another if he causes motion, change of motion, or cessation of motion or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body.

13) 'Criminal force' as per Section 350 of IPC, would mean using of force to any person, without that person's consent, in order to commit some offence or with a view to cause injury, fear or annoyance to the person to whom the force is used.

14) Section 351 of IPC defines 'assault' as any gesture or any preparation intending that such gesture or preparation will cause any person present to apprehend that he, who makes that gesture or preparation, is about to use criminal force to that person. Assault or criminal force is an essential ingredient of offence under Section 354 of the IPC. Thus, if a person uses criminal force or assaults a woman with an intention to outrage her modesty, he is said to have committed an offence under Section 354 of IPC.

15) The expression “modesty” is not defined in IPC but the said expression has been a subject matter of discussion and deliberation in a number of judgments and in this regard, it would be apt to refer to the following observations of the Supreme Court in the celebrated case of **Rupan Deol Bajaj and another vs. Kanwar Pal Singh Gill and another**, (1995) 6 SCC 194:

“14. Since the word ‘modesty’ has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct”. The word ‘modest’ in relation to woman is defined in the above dictionary as “decorous in manner and conduct; not forward or lewd; shamefast”. Webster’s Third New International Dictionary of the English Language defines modesty as “freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct”. In the Oxford English Dictionary (1933 Edn.) the meaning of the word ‘modesty’ is given as “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions”.

15.From the above dictionary meaning of ‘modesty’ and the interpretation given to that word by this Court in Major Singh case [AIR 1967 SC 63 : 1967 Cri LJ 1 : 1966 Supp SCR 286] it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which

is capable of shocking the sense of decency of a woman.....”

16) The expression ‘modesty’ was again interpreted by the Supreme Court in the case of **Attorney General vs. Satish and another**, (2022) 5 SCC 545, in the following manner:

“66..... These require an element of application of physical force, to women. The expression “modesty” was another limitation as older decisions show that such a state was associated with decorousness [Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059] of women. This added a dimension of patriarchy and class. [Section 354 (or any other provision of IPC) does not offer a statutory definition of the term “modesty”, and over time, was interpreted broadly, contemporaneously with the developing and acknowledged role of women in society, to overcome its inherently colonial and patriarchal origins. Yet, there were hangovers, as noticed as recently as in Kailas v. State of Maharashtra, (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401, wherein the abhorrent argument that a tribal woman's “modesty” was distinct owing to the “inferiority” of tribal people who live in torn clothes or no proper clothes was rejected for being totally unacceptable in modern India.] One cannot be unmindful of the circumstances in which these provisions were enacted by a colonial power, at a time, when women's agency itself was unacknowledged, or had limited recognition. Further, women in India were traditionally—during the time of enactment of IPC, in the mid-Nineteenth Century—subordinated to the care of their fathers, or their husbands, or other male relatives. They had no share in immovable property;

notions of gender equality were unheard of, or not permitted. Women had no right to vote. Quite naturally, the dignity of women—or indeed their autonomy, was not provided for.

67. *The advent of the Constitution of India revolutionized—at least in law, all that. Regardless of gender, race, caste, religion or region, or all of the acknowledged sectarian and discrimination enabling barriers, everyone enjoyed equality of law, and equal protection of law (Article 14). Further, the provision in Article 15(1) proscribed discrimination by the State (in all its forms) on various grounds, including gender. Article 15(3) enabled the State to enact special provisions for women and children.”*

17) From the foregoing analysis made by the Supreme Court, it is evident that modesty is the quality of a woman of being modest whereas in relation to a woman, it means decorous in manner and conduct. Thus, any act which shocks the sense of decency of the woman would come within the purview of the offence of outraging the modesty of a woman. An act emanating from a man which tends to or which is perceived to be of such a nature as would amount to offensive, indecent or degrading to a woman’s sense of decency and morality, would amount to outraging the modesty of a woman. These acts can include inappropriate touching, disrobing or indecent gestures or remarks.

18) With the aforesaid legal position in mind, let us now advert to the facts of the present case. As per the allegations made in the impugned FIR, the petitioners are alleged to have pushed the complainant while there was some altercation between them. As a result of this, the

complainant fell down and her headgear also fell down. This according to the prosecution amounts to outraging modesty of the complainant. The statement of the complainant recorded during investigation of the case is also on similar lines. The question that arises for determination is whether the alleged act by the petitioners of pushing the complainant during an altercation, which resulted in dislodging of her headgear, would amount to outraging her modesty.

19) Intent to outrage or the knowledge that by the offending act the accused would outrage modesty of the victim women is basic ingredient of offence under Section 354 of IPC. Mere assault or use of criminal force to a woman simplicitor, without there being any intention on the part of the accused to outrage the modesty of the victim, would not fall within the definition of the offence punishable under Section 354 of the IPC. An assault or use of criminal force to a woman simplicitor unaccompanied by a state of mind to outrage modesty of such woman cannot be termed as an offence under Section 354 of IPC.

20) In the present case, the petitioners and the complainant were having an altercation, during which she was pushed down, which resulted in fall of her headgear. There is nothing either in the statement of the complainant or in the material collected by the Investigating Agency during investigation of the case to remotely suggest that the petitioners intended to outrage modesty of the complainant. While drawing such inference, this Court is taking into account the fact that the

complainant was a septuagenarian lady and the petitioners happen to be her nephews. Having regard to the age of the complainant and having regard to the fact that she was closely related to the petitioners, it is difficult to conceive that the petitioners intended to outrage modesty of the complainant. Thus, it cannot be stated by any stretch of reasoning that the allegations made in the impugned FIR and the material collected by the Investigating Agency makes out a case of offence under Section 354 of IPC against the petitioners.

21) The other allegation against the petitioners is that they have committed criminal trespass, inasmuch as they have entered the land of the complainant with an intention to commit the offence. Section 441 of the IPC defines criminal trespass as entry into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. Thus, the gist of offence under Section 447 of IPC, which provides for punishment for criminal trespass, is that the property, on which the aggressor party has entered, should be in possession of the victim. Unless it is shown that the property, upon which trespass is committed, is in possession of the victim and not in possession of the offender, it cannot be stated that the offence of criminal trespass has been committed.

22) Adverting to the facts of the present case, the material placed on record by the petitioners along with petition clearly demonstrates that there is a serious dispute between the parties with regard to the ownership and possession of the land where the alleged occurrence has taken place.

A series of orders have been passed by the Revenue Courts and Civil Courts in respect of the land in question directing the parties to maintain status quo on spot. In these circumstances and in the absence of any demarcation of the land upon which the petitioners are alleged to have committed criminal trespass, the offence under Section 447 of IPC cannot be stated to have been constituted. Neither in the FIR nor in the material collected by the Investigating Agency during investigation of the case, the land on which the occurrence is alleged to have taken place has been demarcated or identified. A perusal of the Case Diary reveals that although the Investigating Agency has claimed that they have completed investigation of the case, yet it has not taken trouble to demarcate the land where the occurrence has taken place nor has it got the site plan relating to the place of occurrence prepared from the revenue agency. In the absence of any such material and in the absence of any revenue record to show that the site of occurrence was actually in possession of the complainant, the offence under Section 447 of IPC cannot be stated to have been constituted against the petitioners.

23) The facts and events which have led to the lodging of impugned FIR leads this Court to the inference that the complainant has tried to settle a civil dispute between her and the petitioners by giving it a criminal colour which has prompted her to lodge the impugned FIR. The Supreme Court has time and again frowned upon the tendency of litigants to convert purely civil disputes into criminal cases. In **Md. Ibrahim & ors. v. State of Bihar and Anr**, AIR 2010 SC (Supp) 347,

the Supreme Court has observed that there is a growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature either to apply pressure on the accused or out of enmity towards the accused or to subject the accused to harassment. It has been further observed that the Criminal Courts should ensure that the proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes.

24) In the present case it can reasonably be inferred from the facts emanating out of the material collected by the Investigating Agency during investigation of the case and various orders passed by the Civil/Revenue Courts, copies whereof have been placed on record by the petitioners, that there is a serious dispute going on between the parties with regard to their joint property. It appears that the complainant, with a view to settle civil dispute, has resorted to lodging of impugned FIR against the petitioners. The same is nothing but an abuse of process of court which needs to be curbed by this Court by exercising its power under Section 482 of the Cr. P. C

25) In view of the foregoing discussion, this Court is of the considered opinion that the allegations made in the impugned FIR supported by the material assembled by the Investigating Agency during investigation of the case, do not disclose commission of any cognizable offence against the petitioners and it also appears that the complainant has lodged the impugned FIR against the petitioners with a view to coerce them to settle a purely civil dispute at her terms. Continuance of criminal proceedings

against the petitioners, in these circumstances, would amount to abuse of process of law.

26) Accordingly, the petition is allowed and the impugned FIR and the proceedings emanating therefrom are quashed.

27) The Case Diary be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR
06.06.2025
"Bhat Altaf-Secy"

*Whether the **Judgement** is reportable: **Yes/No***

