

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

Reserved on: 29.10.2025

Pronounced on: 31.10.2025

Uploaded on: 31.10.2025

*Whether the operative part or full
judgment is pronounce: **Full Judgment***

CRM(M) No.182/2022

MUSHTAQ AHMAD SHAH & ORS.

...PETITIONER/APPELLANTS(S)

Through: - Mr. Naveed Gul, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

*Through: - Mr. Ilyas Nazir Laway, GA, with
Ms. Maha Majeed, Assisting Counsel.
H/C Gulzar Ahmad of P/S M. R. Gunj present in person.*

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

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged FIR No.84/2021 for offences under Section 354 and 448 of IPC registered with Police Staton, M. R. Gunj, Srinagar.

2) As per prosecution case, on 25.08.2021, while the complainant was sitting at her home, petitioner Mushtaq Ahmad Shah, who happens to be her brother-in-law, along with his wife, petitioner Shaheena and his son, petitioner Tawseeq Mushtaq Shah, came over there and knocked the door of her house. It is further alleged that the complainant

was given a beating by the petitioners and they also broke open the lock of her another room. Prior to it, in the month of June, petitioner Mushtaq Ahmad Shah and his wife along with police officials had come to the home of the complainant and questioned her. It is also alleged that on 25.08.2021, the petitioners also hurled abuses upon the complainant, whereafter she contacted her husband on telephone. However, she was dragged by petitioner Mushtaq Ahmad Shah and his wife out of her house and in the meantime, her husband came on spot and he objected to it, as a result of which she was set free by the petitioners. Thereafter the petitioners attacked her husband and gave a beating to him and when she tried to rescue him she was again dragged, as a result of which her headgear fell down, which amounted to outraging of her modesty.

3) It seems that the impugned FIR came to be registered on the basis of the order passed by the learned Special Mobile Magistrate, PT&E, Srinagar, passed on 06.10.2021.

4) The petitioners have challenged the impugned FIR on the grounds that there is a civil dispute going on between the parties and the complainant has lodged the impugned FIR only with a view to wreak vengeance upon the petitioners. It has been further contended that the allegations made in the

impugned FIR do not constitute any offence against the petitioners. It has been submitted that the petitioners and the private respondents are co-owners and co-sharers of the property situated at Khankai Moulla, Kalashpora, Srinagar, which was purchased jointly by petitioner No.1 and his real brother, respondent No.5, way back in the year 1995. It has been further contended that 1/3rd of the said joint property was sold by petitioner No.1 and respondent No.5 to their brother, namely, Mehmood Ahmad Shah.

5) According to the petitioners, they are presently putting up at a different place and had kept their share in the aforesaid property under lock and key but the private respondents, taking advantage of their absence from the property in question, tried to dispossess them by breaking open the locks which prompted petitioner No.1 to file a civil suit for permanent prohibitory injunction against the private respondents before the Court of learned 2nd Additional Munsiff, Srinagar, who, vide order dated 04.12.2015, has directed the parties to maintain status quo .

6) It has been submitted that despite the aforesaid order of status quo passed by the civil court, the private respondents tried to violate the same which compelled petitioner No.1 to approach the civil court seeking

implementation of the status quo order through police agency. Accordingly, another order dated 25.05.2016 came to be passed by the learned Civil Court in the said application.

7) It has been further stated that on 05.08.2021, when petitioner No.2 went to the disputed property, she was mercilessly beaten by the private respondents, which resulted in lodging of FIR No.70/2021 for offences under Section 354 and 323 of IPC. It is the contention of the petitioners that the private respondents, in order to wreak vengeance upon them, have lodged the impugned FIR which is absolutely false.

8) The official respondents, in their reply to the petition, have submitted that during the course of investigation, the charges levelled against the petitioners have been established against the petitioners and the charge sheet has been prepared against them.

9) The private respondents were summoned but despite service, they did not contest the petition.

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

11) As per the case established during the investigation of the impugned FIR, the petitioners are alleged to have

committed two offences, one under Section 354 and the other under Section 448 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.

12) Section 354 of IPC defines the offence of outrating 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 there by 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.

13) 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.

14) 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.

15) '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.

16) 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.

17) 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.....”

18) 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."*

19) From the foregoing analysis of the law laid down 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.

20) With the aforesaid legal position in mind, let us now advert to the facts of the present case. As per the allegations made by the complainant-respondent No.4 in her statement recorded under Section 164 Cr. P. C during investigation of the case, the petitioners are alleged to have dragged her and beaten her, as a result of which her headgear fell down. This according to the prosecution amounts to outraging modesty of the complainant. The question that arises for determination is whether the alleged act by the petitioners of dragging the complainant during an altercation, which resulted in dislodging of her headgear, would amount to outraging her modesty.

21) 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.

22) In the present case, as per the statement of the complainant and other witnesses recorded during investigation of the case, she was dragged by the petitioners 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 happens to be the sister-in-law of petitioners No.1 and 2 and aunt of petitioner No.3. Having regard to the close relationship between the parties, 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.

23) The other allegation against the petitioners is that they have committed criminal trespass, inasmuch as they have

entered the house 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 448 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.

24) 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 house in which the alleged occurrence has taken place. A civil suit between the parties is pending before the Civil Court and there is an order of status quo in operation passed by the Civil Court. It also appears that the petitioners are co-owners of the property where the alleged occurrence is stated to have taken place. Therefore, mere entry of the petitioners into the said property would not amount to trespass.

25) 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 investigate the aspect with regard to civil dispute between the parties regarding the property where the offence is alleged to have taken place. No investigation in this regard has been conducted by the respondent Investigating Agency nor any material has been collected by it to show that the site of occurrence was in exclusive possession of the complainant party. In the absence of any such material, it cannot be stated that the offence under Section 448 of IPC is made out against the petitioners.

26) 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.

27) 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, copies whereof have been placed on record by the petitioners, that there is a serious dispute going on between the parties with regard to the property in question. It appears that the complainant, with a view to settle a 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

28) 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.

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

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

(Sanjay Dhar)
Judge

SRINAGAR
31.10.2025
“Bhat Altaf”

Whether the **judgment** is reportable: **Yes**

