

(2019) 02 J&K CK 0077

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 643 Of 2010

Abass Ali And Ors

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 223, 313, 342,
451, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 02 J&K CK 0077

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : M. R. Qureshi, Amit Gupta

Final Decision : Dismissed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C.) petitioners seek quashment of FIR No.189/2017 dated 14.10.2017 registered with Police Station, Mendhar, for commission of offences punishable under Sections 451/147/504/506RPC on the following grounds:-

"That the two FIR's already lodged against the respondent No.5 by petitioner No.3 and 4 vide FIR no. 68 of 2017 dated 28.4.2017 and FIR no.116 of 2017 dated 04.07.2017 in the same police Station Mendhar, the present FIR lodged against the petitioners a counter blast with a view to harass and victimize the petitioners.

That the FIR was lodged against 12 persons, whereas admittedly alleging against only five persons in the written complaint of dated 16.09.2017.

That on the basis of false and frivolous statements of two witnesses namely Nahiem, son of Mushtaq Ahmed and Naveed Ahmed S/o Abdul Qayoom, both are

resident of village Ari, Tehsil Mendhar but factually both of them were in abroad were not present, as such on the basis of their false statement, the report was submitted by the respondent no 6 to the learned CJM Poonch on the basis of which the FIR was lodged as such, petitioners were got implicated falsely and no case is made out against them."

2. The respondent-SHO Police Station, Mendhar has filed status report stating that on 20.09.2017, one Mohd Aziz S/o Khadim Hussain caste Solan R/o Ari, submitted an application against 1. Asif Ali S/o Mohd Razaq, 2. Mohd Azam S/o Hakim Din, 3. Mst. Shamim Akhter W/o Mohd Azam, 4. Nayaz Ahmed S/o Mohd Azam, 5. Nawaz Ahmed S/o Mohd Azam, 6. Mst. Ulfat Bi W/o Mohd Razaq, 7. Mst. Asma Kousar W/o Rameez Anjum D/o Mohd Razaq, 8. Abas Ali S/o Mohd Razaq, 09. Mohd Hussain S/o Munir Hussain, 10. Negat Ara W/o Asif Ali R/o Ari, 11. Mohd. Bashir S/o Saraj Din, 12. Sameer Ahmed S/o Mohd. Bashir R/o Harmutta Gursai duly endorsed by Chief Judicial Magistrate, Poonch, mentioning therein that the non-complainant has registered a fake FIR against him under Sections 223/342/313 RPC and during the course of investigation police has deleted Section 313 and Section 498-A added. In the status report, it is further stated that the non-complainant is an employee in defence and on 16.09.2017 he came on leave and started speaking un-parliamentary language and other non-complainants also came in the house of complainant who also spoken bad language. The said complaint was sent to I/C PP Ari for enquiry about the matter, who after conducting enquiry filed a detail report before CJM Poonch, and the court passed a direction for lodging of FIR. On this, a case FIRNo.189/2017 under Section 451, 147, 504, 506 RPC has been registered and the investigation of the case entrusted to ASI Kuldeep Raj of I/C PP Ari. During the course of investigation, Investigating Officer visited on spot, prepared site plan and recorded the statements of witnesses under Section 161 Cr. P.C. In the status report, it has been further stated that during the further course of investigation accused, namely 1. Abas Ali S/o Mohd Razaq R/o Ari, 2. Mohd Bashir S/o Saraj Din R/o Harmutta Gursai are given bail by Police and 10 other accused persons are still absconding.

3. I have considered the rival contentions of the learned counsel for the parties.

4. The law with regard to quashment of FIR is now well settled. FIR can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression ends of justice and to prevent abuse of process of any court are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it.

5. This court while exercising the power under section 561-A Cr.P.C, does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate prosecution. This is discretionary power vested in

High Court to do substantial justice. High Court cannot examine the evidence as to whether charge for alleged offence is made out or not. This is prerogative of trial court where challan is produced. Where accused has opportunity to advance submission before trial court that material on record does not call for framing of charge then High court shall not exercise power under section 561-A Cr.P.C.

6. In present case, petitioners have raised disputed question of facts, which cannot be agitated in this petition. All the pleas taken in the petition and those argued may be relevant for discharge of accused, but not for quashing the FIR, because all the pleas are pertaining to appreciation of facts. It is not case of petitioner that there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding.

7. Investigation in the case has been stayed at threshold; the grounds taken that present FIR has been lodged against the petitioners as a counter blast to FIR no.68 of 2017 dated 28.04.2017 and FIR No.116 of 2017 dated 04.07.2017 with a view to harass and victimize the petitioners, is a fact to be investigated by police; another ground taken that the FIR was lodged against 12 persons, whereas admittedly alleging against only five persons in the written complaint dated 16.9.2017 and two witnesses namely Nahiem, son of Mushtaq Ahmed and Naveed Ahmed S/o Abdul Qayoom, both are in abroad and were not present, is also subject matter of investigation.

8. In view of above discussion, this petition is dismissed. Interim stay, if any, is vacated. However, investigating officer shall investigate the above stated grounds/ defenses of petitioners before concluding the investigation in the matter, so that innocent petitioners, if any, may not suffer false and vexatious prosecution.