

(2018) 10 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 265 Of 2018, IA No. 01 Of 2018

**Ayaz Ahmed And Ors @APPELLANT@Hash State Of Jammu & Kashmir
And Anr**

Date of Decision : 17-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 156, 156(1), 156(2), 156(3), 482, 561A

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 323, 324,
354, 427, 452

Jammu And Kashmir Police Rules, 1960 — Rule 597

Citation : (2018) 10 J&K CK 0049

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : P. N. Bhat, 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 quashing of FIR No. 45/2018, registered with Police Station, Poonch under Sections 452, 147, 427, 354, 148, 323 RPC.

2. The case of the petitioners is that petitioner Nos. 2, 5, & 7 purchased land from respondent No. 2 and his other brothers vide various Agreements to Sell from 2004 onwards. It is stated that respondent No. 2 executed agreement to sell for land measuring 1 Marla 7 ½ Sarsai falling under survey No. 494 on 11.08.2014; another agreement was executed on 15.04.2004 for land measuring 2 Marlas falling in the same survey number. It is further submitted that the respondent No. 2 along with other co-owners, namely, Mohd. Sadeeq also sold 7 Marlas 1 Sarsai to the petitioner No.2 vide agreement dated 18.12.1998. It is stated that the respondent No.2 sold 3 marlas of land from same survey number to petitioner No. 5 vide agreement dated 01.07.2004 and further he sold 5 Marlas of land to petitioner No. 5 from same survey number vide agreement dated 27.07.2004. It is further stated that co-owners of the respondent No.2,

namely, Wazir Mohd. sold 6 Marlas of land from the same survey number to petitioner No.2 vide agreement dated 07.04.2008; sold 1 kanal 1 marla to petitioner No.2 vide agreement dated 15.04.2004. Said Wazir Mohd. also sold 7 Marlas of land from same survey number to petitioner No. 5 vide agreement dated 07.02.2004 and he also sold 3 ½ Marla from same survey number to petitioner No.7 and his brother Mohammad Bashir vide agreement dated 29.01.1999.

3. Learned counsel for the petitioners states that respondent No.2 and his other co-owners after receiving full and final payment executed the aforesaid agreements and handed over the physical possession of the aforesaid land to the petitioner Nos. 2, 5 and 7. It is stated that the petitioners along with their family members are in physical possession of the said land from the year 1998. Further that respondent No. 2 and his other co-owners never interfered with the possession of the petitioners till 12.04.2018 who are cultivating the said land without any interference at the hands of respondent No. 2 and other co-owners. It is further stated that petitioner Nos. 2, 5 and 7 requested the respondent No. 2 and his co-owners to execute valid Sale Deeds in their favour so as to correct the revenue record. It is further stated that revenue authorities while carrying the visit spot for the purposes of Girdwari, reflected the names of petitioners No. 2, 5 & 7 in the revenue record by way of annual Girdwari.

4. Learned counsel for the petitioners states that all of a sudden the respondent No. 2 and his co-owners turned greedy and started selling the property to other unknown persons. The petitioners filed an application before the SDM Surankote for having Nishandehi of the aforesaid land. The SDM Surankote addressed the application to the Tehsildar Surankote and asked him to do the needful in light of the application and submit the compliance report. Thereafter, the concerned Patwari and Girdwar visited the spot for the purposes of Nishandehi. It is stated that on 12.04.2018, the petitioner Nos. 1, 2, 5 & 7 were under the process of encircling their land, which provoked the respondent No. 2 and his co-owners who called their family members and pounced upon the petitioners No.1, 2, 5 & 7 with lathies, sharp edged weapons and started beating them. In this process, grievous head injury was caused to the petitioner No.1 and multiple injuries to other petitioner Nos. 2, 5 & 7. Petitioner No. 1 was taken to hospital. The respondent No.1-Incharge Police Station, Surankote did not register any FIR against the respondent No.2 and others, which constrained the petitioners to approach the Court of Sub-Judge, Surankote under Section 156(3) Cr. P. C. It is stated that once the application under Section 156(3) Cr. P. C was endorsed by Sub-Judge to the respondent No. 1, respondent No. 2 also approached the Court of Sub-Judge, Surankote and filed an application under Section 156(3) Cr.P.C upon which respondent No.1 immediately acted and registered FIR No. 45/2018 as a counter blast to the allegations leveled by the petitioners. Thereafter, respondent No. 1 also registered FIR No. 48/2018 under Section 324/323 RPC against the respondent No.2 and other accused persons.

5. Aggrieved by the FIR No. 45/2018 registered with the Police Station, Surankote dated 16.04.2018, the petitioners challenge the validity of the said FIR, inter alia, on various following grounds:-

That the respondent No. 2 and other co-accused pounced upon the petitioners No.1, 2, 5 & 7 who were present on spot and caused bodily injuries by lathies and sharp edged weapons; that no other person who have been shown in the FIR No. 45/2018 were present on spot at the time of occurrence; that occurrence has taken place on 12.04.2018 and the FIR was registered after four days i.e, on 16.04.2018 by respondent No. 2; that respondent No.1 was influenced by the money power of the respondent No. 2 and did not register the FIR on the complaint of the petitioner No.1 and was forced to register the FIR only after intervention of the Judicial Magistrate, Sub-Judge, Surankote; that instead of taking action against the respondent No. 2 and others, respondent No.1 directed the respondent No. 2 to get an order from the Court so that FIR is registered against the petitioners also; that the names shown in the FIR by respondent No.2 were not at all present at the place of occurrence which is also supported by the certificates issued by the concerned authorities as one accused, namely, Arif Hussain who is undergoing B.Sc Agriculture 2nd Semester in Desh Bhagat University Mandi Govindgarh, Punjab was present in the University from 01.04.2018 to 18.04.2018. In the same manner other accused, namely, Gulzar Ahmed, Javed Akhter, Niaz Ahmed who are all government employees were present in their office at the time of the occurrence and further that petitioners No. 4, 9 & 10 who are female girls undergoing studies in their colleges were also not present on the spot.

6. I have considered the rival contentions and law on the subject. Counsel for petitioners has reiterated all grounds taken in petition, whereas counsel for respondent-State has argued that investigation is at initial stage and facts narrated by petitioners cannot be considered at this stage.

7. In AIR 2017 SUPREME COURT 37 in case titled State of Telangana Vs. Habib Abdullah Jeelani & ors., it is held as under:-

"11. Once an FIR is registered, the accused persons can always approach the High Court under Section 482 CrPC or under Article 226 of the Constitution for quashing of the FIR. In Bhajan Lal (supra) the two-Judge Bench after referring to Hazari Lal Gupta v. Rameshwar Prasad[7], Jehan Singh v. Delhi Administration[8], Amar Nath v. State of Haryana[9], Kurukshetra University v. State of Haryana[10], State of Bihar v. J.A.C. Saldanha[11], State of West Bengal v. Swapan Kumar Guha[12], Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi[13], Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojiroo Angre[14], State of Bihar v. Murad Ali Khan[15] and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of illustration wherein the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 CrPC could be exercised either to prevent abuse of the

process of any court or otherwise to secure the ends of justice. The Court also observed that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad cases wherein such power should be exercised. The illustrations given by the Court need to be recapitulated:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where 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 proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is worthy to note that the Court has clarified that the said parameters or guidelines are not exhaustive but only illustrative. Nevertheless, it throws light on the circumstances and situations where court's inherent power can be exercised.

12. There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of

wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

8. From bare perusal of allegations leveled in FIR, cognizable offences have been made out. The disputed question of facts cannot be appreciated for quashing the FIR. Police has statutory duty to investigate the cognizable offences in terms of section 156 of C.P.C.; this duty cannot be scuttled, while exercising jurisdiction under section 561-A Cr.P.C. The defense of accused cannot be considered at this stage. The FIR need not be encyclopedia of all relevant facts and more incriminating material will be unfolded only during investigation. FIR cannot be placed on the same pedestal as the charge; in case a FIR showing facts which makes out cognizable offence is nipped in the bud even before the entire facts are unraveled, incalculable harm might be caused by depriving the police of their right to collect evidence. It is not the case of petitioners that there is some legal bar in law in investigating the matter. The argument of counsel for petitioners that some of petitioners were at duty and some were in their college, is not tenable at this stage, because plea of Alibi is a fact which is required to be investigated by police only, if investigation is conducted in impartial manner. Another argument that FIR No.45/2018 against petitioners is counter blast to FIR No.48 of 2018 which has been lodged by petitioners, is also not tenable, because FIR impugned has been lodged prior to FIR lodged by petitioners against the respondents no.2. Another argument of counsel for petitioners that there is land dispute, so respondent no.2 has lodged false FIR, is also not tenable, because it is also fact which requires complete investigation. During investigation I/O has not to consider only the facts projected by complainant, but has also to consider the facts narrated or brought to the knowledge of I/O by accused in order to challenge the veracity of evidence of complainant. This has been provided in Rule 597 of the Jammu & Kashmir Police Rules, which is reproduced below:-

"597. Investigating Officer-General duties of. - An investigating officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to find out the truth of the matter under investigation, and not solely to obtain convictions. In order to ascertain the truth he must use the powers of observation, his knowledge of criminals and their methods and any other means that may be available to him in addition to the recording of statements. At an early stage of an investigation he should consult the village crime note book and other records to learn of any matters recorded there which may have a bearing on the case. He must not prematurely commit himself to any view of the facts for or against any person and although he need not go out of his way to secure evidence for the defence in a case in which he has satisfactory grounds of believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him and must consider such evidence carefully if produced."

9. Inherent powers under Section 561-A of the Code is not to be exercised in a routine manner; it must be exercised sparingly, with circumspection and in rarest

of rare cases. Exercise of inherent power under this section of the Code of Criminal Procedure is not the rule but it is an exception. In a catena of decisions, consistently apex court gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice. The High Court in exercise of the extraordinary jurisdiction cannot embark upon seriously disputed questions of facts taking its cue from documents which were never produced before I/O. The police had not even unraveled the allegations leveled in FIR.

10. In view of above, I do not find any ground to quash the FIR. Petition is accordingly dismissed. However, petitioners are at liberty to produce all documents which they have produced before this court, before I/O. If any such documents are produced, then I/O shall consider the same in its right perspective. Stay, if any, is vacated.