

(2019) 02 J&K CK 0104

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 293 Of 2018, IA No. 01 Of 2018

Baldev Singh And Others

APPELLANT

Vs

Des Raj

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 173, 197, 200, 482

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 182, 341, 347A, 379, 420, 426, 427, 447, 467, 468, 471

Constitution Of India, 1950 — Article 226

Citation : (2019) 02 J&K CK 0104

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : G.S. Thakur, S.H. Rather

Final Decision : Allowed

Judgement

1. Heard.

2. Through the instant petition filed under Section 561-A Cr.P.C., the petitioners seek quashing of the criminal complaint No.65/Complaint under Sections 426, 427 and 379 RPC and order dated 10.11.2017, by which the court of learned Munsiff, Reasi has taken the cognizance against the petitioners for the commission of aforesaid offences.

3. The brief facts of the case are that the petitioner Nos.2 and 4, who are Tehsildar, Katra and S.H.O. Reasi, respectively having protection of Section 197 Cr.P.C, besides this petitioner No.1, who is a Police Head Constable and petitioner No. 3 is a Patwari of Village Kotli Manotrian, in discharge of their official duty conducted the demarcation of the common path. That the petitioner No.5, who is a resident of Village Kotli, Manotrian having his moveable and immovable property, there is a common pathway leading towards the house of the petitioner

No.5, which was encroached upon by the respondent and thereafter, he lodged a criminal complaint with petitioner No.4, who assigned the investigation of the case to petitioner No. 1. The petitioner No.1 in order to establish the offence under Sections 447, 427, RPC made a communication with the petitioner Nos. 2 and 3 to conduct the demarcation of the land so as to ascertain whether the respondent is the owner of the land or not, beside this the common passage has been encroached by the respondent, consequently, the Revenue Department headed by petitioner No.3 conducted the demarcation of the land being Tehsildar, Katra and submitted the report to the Investigating Officer alleging therein that the land falling under Khasra No.1481/1056 measuring 11 marlas, which is a Gair Mumkin Rasta leading towards the cremation ground and fall within the definition of common land has been encroached by the respondent. That the petitioner No.1 on the basis of the revenue record/report submitted by the Tehsildar and Patwari i.e. petitioner Nos. 2 and 3 closed the investigation and submitted the final report in terms of Section 173 Cr.P.C before the Judicial Magistrate (CJM) Reasi with a request to initiate the proceedings under Section 182 RPC against the respondent. That the respondent instead of filing the protest petition before the learned Chief Judicial Magistrate and just in order to take revenge with the petitioners, who as per the respondent did not favour him during the course of investigation, filed a criminal complaint for the commission of offence punishable under Sections 426, 427, 379 RPC alleging that the Gate of the house was removed by the petitioner No.5. The learned Munsiff, Reasi without taking into consideration that there is a closure report filed by the Investigating Agency i.e. the petitioner No.1 on the report submitted by the petitioner No.2 and 3 took the cognizance just in a routine manner without drawing any satisfaction and the petitioner Nos.2 and 5 who are the Gazetted Officers having protection of Section 197 Cr.P.C. besides this the investigation as well as the demarcation was conducted just while discharging their official duty, which cannot be questioned or no cognizance can be taken by any court of law qua the investigation conducted by the Investigating Officer summoned the petitioners.

4. The petitioners have challenged the impugned order on the following grounds:

"(a)That the order impugned as well as the complaint is liable to be quashed on a ground that it is completely abuse of process of law. The respondent who lodged an FIR No. 121/2017 under Sections 447, 427 RPC against the petitioner No. 5 in which the investigation was conducted by the petitioner No. 1 and the report pertaining to demarcation was submitted by the petitioner Nos. 2 & 3 on the basis of which the FIR was closed and final report was submitted by the petitioner No. 1 duly endorsed by Dy. SP Headquarter Reasi drawing the satisfaction. The respondent instead of filing the protest petition before the Learned Chief Judicial Magistrate, Reasi again started harassing the petitioner No. 5 and consequently who lodge an FIR against the respondent being FIR No. 16/2018 under Sections 341, 347-ARPC which is still under investigation. The respondent in order to take revenge with the petitioner Nos. 1 to 4 who during

the course of their active duty conducted the investigation did not find any criminality against the petitioner No. 4 which was not favorable to the respondent and with a revengeful attitude filed the complaint against the petitioners alleging to be an act under the Provision of Sections 426, 427 & 379 RPC. Thus the court below without taking into consideration this fact has issued the process against the petitioners which is totally based on non-application of mind. It is the settled law as held by the Hon'ble Supreme Court in various judgments that cognizance of an offence on complaint there has to be application of mind as to whether the allegation in the complaint when considered along with the statement recorded or the inquiry conducted thereon would constitute violation of law, so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. To set in motion the process of criminal law against a person is a serious matter, there must be sufficient indication in the order on the application of mind by the Magistrate to the facts constituting commission of an offence and the statement recorded under Section 200 Cr.P.C, so as to proceed against the offender. The order impugned whereby the cognizance has been taken by the court below nowhere indicate that how the satisfaction has been drawn by the court, except writing that in a glance the learned Magistrate has drawn the satisfaction, therefore, order impugned is bad and liable to be quashed.

(b) That the complaint is otherwise liable to be quashed on the ground that the present complaint has been filed as a counter blast admittedly the petitioner Nos. 1 to 4 who are the government official while discharging their active duty conducted the investigation and demarcation during which came into light that the respondent is an encroacher over the common path by installing the iron Gate. It is apt to mention here that there was a dispute between the petitioner No. 5 and the respondent pending before the court of learned Munsiff, Katra, titled, Des Raj vs Baldev Raj in which the learned Munsiff, Katra while deciding the preliminary issue quo the jurisdiction of the civil court return the suit filed by the respondent to present the same before the appropriate forum. Thus the respondent who is admittedly involved in number of litigation just with a revengeful attitude filed the complaint which is sheer misuse of process of law. When the closure report was filed by the petitioner No. 1, the respondent just in order to harass the petitioners filed the present complaint which is abuse of law, therefore liable to be quashed.

(c) That the impugned complaint is otherwise liable to be quashed in view of the fact that it does not constitute an offence within the meaning of Sections 426, 427 and 379 RPC.

(d) That the impugned complaint is otherwise liable to be quashed in view of the fact that it is totally abuse of process of law and lodged against the petitioners in order to implicate them in the commission of offence and to pressurize the petitioners to surrender the possession of the common path and deter the official petitioners from exercising their statutory duty, so as to remove the

encroachment over the common passage."

5. I have considered the rival contentions of the parties and gone through the documents annexed with this petition. Learned counsel for the petitioners has reiterated all the grounds taken in this petition, whereas respondent has supported the order passed by the trial court.

6. Before advertng to the grounds of challenge, it would be advantageous to narrate the relevant contents of the complaint which reads as under:

"1.That the complainant is exclusive owner in possession of 14 Kanal 15 Marlas of land under khasra No. 1480/1056, situated at Village Kotli Manotrian, Morha Saldi, Tehsil and District Reasi. The said land has been fenced by the complainant and an iron gate was installed for the fencing of said land.

2.That, however, on 20.08.2015 accused no. 5 broken the gate which was installed in the fencing of the said land by the complainant and pursuant to this FIR was registered against accused No. 5 at Police Station Reasi on 26.06.2017 after various efforts made by the complainant.

3.That when the complainant got the certified copy of FIR from the concerned court, he was shocked to know that FIR was not registered on the basis of complaint filed by the complainant before the Court on 24.08.2015 but was registered on the basis of fake application dated 20.08.2015 written by accused no. 01 and also forged the signature of the complainant wherein the land under Khasra no. i.e 1451/1056 & 1450/1056 which belongs to accused no. 5 was mentioned instead of Khasra no. 1480/1056 which belongs to the complainant where the Gate was installed. Pursuant to this, forgery in the FIR, complainant filed complaint before the Court of Munsiff Reasi in terms of Sub-Section (3) of Section 156 Crpc for registration of FIR against accused No. 1, 4 & 5 for the offences punishable under Section 420,467,468 and 471 of RPC and the said court referred the same with direction to SSP Reasi to investigate the case and proceed under law in terms of 156 (3) Cr.PC. 4.That accused No. 1,4 and 5 with a view to create undue pressure upon the complainant and to cause harm to the complainant hatched a criminal conspiracy with accused no. 2 & 3 and on 31.10.2017 at about 11:30 AM when complainant was present in the Court of Sessions Judge Reasi in connection with a criminal Revision titled "Des Raj Vs Baldev Raj & Ors", and after caused his appearance when reached his place was residence, he was shocked to see that his gate was again broken by some person and after enquiry from the local persons, the complainant was told by one Raj Kumar (Shopkeeper) that his gate was broken by accused no. 01, 2, 3, & 5 including two lady constable and there policeman with the help of JCB machine.

5.That thereafter the complainant along with one Vikas Kumar and other local persons at about 02:00 PM approached the office of accused no.2 regarding the said broken of Gate which was installed by the complainant but accused no. 2 openly denied the knowledge of any incident regarding the broken of gate of the complainant and also told the complainant that neither he issued any order for

breaking the gate of complainant nor he went to the spot along with other accused persons but as a matter of fact accused No. 01, 2, 3 & 5 were seen by no. of local inhabitants of locality including the shopkeeper namely Raj Kumar who destroyed the Property of the complainant by broken the gate with the help of JCB Machine.

6. That, however, on 03.11.2017 at about 06:30 PM when the complainant was sitting in a shop near to his house, accused no. 4 came in his Gypsy along with one load carrier (vehicle) and took one part of broken gate from the spot dumped in load carrier without the consent of the owner and this overt act of accused no. 4 was also seen by the complainant and other persons who took the gate from the spot and kept in his illegal possession.

7. That accused no. 1, 4 & 5 hatched a criminal conspiracy with accused no. 2 & 3 in order to pressurize the complainant and with an intent to grab the land of the complainant with a view to dispossess him willfully and deliberately broken the gate without any order issued by any authority, illegally committed the offence of mischief and thereafter stole the gate without the consent of the complainant thus have committed the offences punishable under Sections 426, 427 & 379 of RPC."

7. I have given my thoughtful consideration to the whole aspect of the matter. Law with regard to inherent power of High court has now been well settled. In AIR 2017 SUPREME COURT 37 in case titled State of Telangana v 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 Chandroji Rao 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. As per above law, a complaint is liable to be quashed, if it does not disclose any offence or is frivolous, vexatious or oppressive; further if the allegations set out in complaint do not constitute offence of which cognizance has been taken by Magistrate, then it can be quashed.

9. In present case, it is admitted fact that petitioner Nos.1 to 3 are Government

Servant and Revenue Officer and petitioner No. 4 is SHO of Police Station at the relevant time. There is also litigation pending between petitioner no.5 and respondent. Bare perusal of the report (annexure-C) would reveal that petitioner No.3, who was Patwari at that relevant time furnished a report to Naib Tehsildar of the area that complainant/respondent herein has encroached upon the common land under Khasra Nos.1481/1056. The perusal of the final report in FIR No.121/2017 under Sections 447, 427 and 34 RPC with regard to land under dispute, wherein the respondent was complainant, would reveal that Police after investigation found that allegations levelled by the complainant was wrong and a final report was filed before the Magistrate with prayer for launching the prosecution under Section 182 RPC against the respondent.

10. Perusal of the order of learned Munsiff, Katra dated 22.05.2017, it would further reveal that respondent filed a suit before the learned Munsiff, Katra with regard to same subject matter and that suit was also dismissed by the Munsiff, Katra on 22.05.2017. Instead of filing any protest petition before the JMIC, Katra wherein the FIR lodged by the complainant was found and proceedings under Section 182 RPC was required to be issued, filed complaint without mentioning the fact that the previous FIR has already been closed. He has also concealed the fact that petitioner Nos.1 and 2 are the Revenue Officers and petitioner No. 4 was SHO at that time, who, conducted the investigation in the FIR.

11. In view of above facts and circumstances of case, it is quite clear that all allegations have been manufactured in order to create illusion of facts that criminal offence has taken place. This criminal proceeding is manifestly attended with mala fide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge.

12. In view of above, this petition is allowed. Complaint is quashed and consequently order impugned passed by the Magistrate is also set aside.