

(2022) 07 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases No. 07 Of 2020

Bilal Ahmad Mir & Ors

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482
Indian Penal Code, 1860 — Section 354, 447, 506

Citation : (2022) 07 J&K CK 0023

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Bhat Fayaz, Sajad Ashraf, Shuja Ul Haq, Azad Ahmad

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioners have challenged FIR No.76/2019 for offences under Section 354, 447 and 506 of IPC registered with Police Station, Nishat Srinagar.

2) It appears that respondent No.2 had filed a complaint before the Court of Chief Judicial Magistrate, Srinagar, alleging therein that the petitioners are residing in her neighbourhood and that there exists a common pathway for ingress and egress to the properties belonging to the parties which is existing there for the last 70 years. It was further averred that the said pathway is being maintained by LAWDA on which electric poles and drainage has been constructed by LAWDA. It was further averred in the complaint that the petitioners are threatening to grab the said pathway and have made many attempts in this regard. It is was further averred that on 25th November, 2019, when the complainant/respondent No.2 was all alone at her home, at about 3.00 P.M, the petitioners barged into her house, caught hold of her hair and wrongfully confined her in one of the rooms of her house whereafter criminal force was used against her. It was further alleged that the petitioners intended to outrage her

modesty but she resisted the same and raised a hue a cry. The neighbours gathered on spot and the complainant was saved from the clutches of the petitioners. Finally, it was alleged that the petitioners, at the time of leaving the spot, threatened to kill complainant and to outrage her modesty.

3) It seems that the aforesaid complaint was endorsed by the learned Chief Judicial Magistrate, Srinagar, to Police Station, Nishat, and, accordingly, the impugned FIR came to be registered and the investigation was set into motion.

4) The petitioners have challenged the impugned FIR on the ground that there is a civil dispute regarding the pathway going on between the parties and that the complainant has lodged the impugned FIR to settle the said civil dispute. In this regard, the petitioners have placed on record the documents which suggest that there is a dispute going on between the parties as regards the pathway. On this ground, it is urged that the dispute between the parties is purely of civil nature and the complainant has un-necessarily given it a criminal colour. Thus, according to the petitioners, the impugned FIR deserves to be quashed. The petitioners have relied upon the judgments of the Supreme Court in the cases of State of Haryana and ors. Vs. Ch. Bhajan Lal and ors. AIR 1992 SC 604, and Ahmad Ali Quraishi and anr. Vs. State of Uttar Pradesh & anr. (Criminal Appeal No.138 of 2020 decided on January 30, 2020).

5) The respondent State has filed the status report with regard to investigation of the case. In the status report, the facts alleged in the impugned FIR have been reiterated and it has been stated that after investigation of the case, offences under 354, 447 and 506 IPC stand established against the petitioners.

6) I have heard learned counsel for the parties and perused the material on record including the Case Diary.

7) Before considering the rival contentions of the parties, it would be necessary to notice the legal position on the subject.

8) In Ch. Bhajan Lal's case (supra), the Supreme Court has laid down illustrations of the case where the High Court, in exercise of its powers under Section 482 of the Cr. P. C, can quash the criminal proceedings. Illustrations (a), (b) and (c) laid down in the said judgment are relevant to the context of this case and the same are reproduced as under:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

9) From a perusal of the aforesaid illustrations, it is clear that if it is shown that the allegations made in the impugned FIR and the material collected by the investigating agency during the investigation of the case do not disclose commission of a cognizable offence, only then the inherent powers under Section 482 of Cr. P. C can be exercised to quash the impugned FIR and the proceedings emanating therefrom.

10) In the instant case, a perusal of the impugned FIR clearly suggest that the complainant/respondent No.2 has alleged that on the fateful day, the accused trespassed into her house, thereafter they threatened to kill her. She has also stated that the assailants tried to molest her. Thus, contents of the impugned FIR definitely disclose commission of cognizable offences. During the investigation of the case, statement of the complainant was recorded under Section 161 of the Cr. P. C. In her statement she has clearly stated that on 25.11.2019, petitioner Bilal Ahmad Mir trespassed into the compound of her house. He hurled abuses upon her, gave a beating to her and she was dragged on ground. She has further stated that petitioners Fareed Ahmad Mir, Sajad Ahmad Mir and Nissar Ahmad Mir also trespassed into her compound and they abused her, extended threats to her. The statements of other prosecution witnesses recorded under Section 161 of the Cr. P. C are also on similar lines. Thus, there is enough material on record to support the allegations made in the impugned FIR, according to which the offences of trespass and criminal intimidation have been committed by the petitioners against the complainant/respondent No.1. Therefore, this is not a case which falls within the purview of any of the aforequoted three illustrations.

11) It has been contended by learned counsel for the petitioners that essentially the dispute between the petitioners and the complainant party is of a civil nature as the same relates to a pathway and, as such, the criminal proceedings cannot go on. In this regard reliance has been placed upon the judgment of the Supreme Court in Ahmad Ali Quraishi's case (supra).

12) It is true that the dispute between petitioners and the complainant party appears to be with regard to pathway but then this dispute has led to the occurrence which is the subject matter of the impugned FIR, contents whereof clearly disclose commission of cognizable offences. Merely because there is a civil dispute going on between the parties does not mean that if a criminal offence emanates from the said civil dispute, the same cannot be investigated into. It is only in respect of those disputes which are essentially of civil nature that criminal proceedings cannot be initiated. Not that every criminal offence arising out of a civil dispute is liable to be quashed irrespective of the fact whether or not the offence is made out.

13) The ratio laid down by the Supreme Court in Ahmad Ali Quraishi's case (supra) is not applicable to the instant case for the reason that in the said case

there was an enquiry report of a competent authority which belied the allegations regarding the occurrence which was subject matter of that case. It is under those circumstances that the Supreme Court quashed the criminal proceedings. In the instant case, there is nothing either on the record of the case or on the record of the Case Diary to suggest anything contrary to the alleged occurrence.

14) For the foregoing reasons, the petition lack merit and the same is dismissed accordingly.

15) The Case Diary be returned to the learned counsel for respondent No.1.