

(2023) 09 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1692 Of 2015

Fayaz Ahmad Hajam

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 309, 323, 341, 354

Citation : (2023) 09 J&K CK 0049

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Z. A. Qureshi, Rehana, Furqan Yaqoob

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1) The present petition has been filed by the petitioner for directing the respondents No.2 and 3 to register a case against the respondents No.4 and 5 for illegal detention of the petitioner and his relatives, with further prayer for directing the respondent No.1 to register a case for extraction of money by respondents No.4 and 5 from the petitioner and further to compensate the petitioner to the tune of Rs.10.00 lacs.

2) The petition has been filed on the ground that on a false and frivolous complaint filed by Mst. Zeba, the petitioner along with his associates had beaten one Javaid Ahmed Hajam, as a result of which he was admitted in SK Institute of Medical Sciences, Soura, Srinagar on 27.07.2013 and was discharged on 28.07.2013. The FIR No.143/2013 for offences under Section 147, 341, 323 and 354 RPC was registered. The petitioner was arrested in the said FIR on 27.07.2013 and released on bail on 28.07.2013. It is further stated that the injured died on 06.08.2013, on which date the petitioner was again arrested along with others in case FIR No.143/2013 and was kept in illegal detention by

the respondent No.5 under section 302 RPC. During the course of investigation in the above mentioned FIR, while the petitioner and others were kept in illegal detention, the petitioner was forced to pay an amount of Rs.7.00 lacs to Ghulam Ahmad Hajam S/o Sonaullah Hajam and Ghulam Rasol Hajam as security and the possession of land measuring 01 kanal and 05 marlas comprised of Survey No.765 situated at Seelu Sopore was given to Mohammad Shafi Hajam, the relative of the deceased. The respondent Nos.4 and 5 had forced the petitioner to make the payment and to hand over possession of the above mentioned land for settling the FIR despite the fact that they were apprised of the fact that the deceased died not because of injury but due to poisoning.

3) The response stands filed by the respondents, wherein it is stated that on 27.07.2013, one lady Mst. Zeba w/o Sonaullah Hajam R/o Seelu Sopore lodged a complaint with Police Station, Sopore, alleging therein that the accused persons, seven in number, including the petitioner, had beaten his son, namely, Javid Ahmad Hajam, who had been admitted in SKIMS, Srinagar, for further treatment and they also dragged the complainant and tore her clothes. On receipt of this complaint, FIR No.143/2013 under Sections 147, 341, 323 RPC was registered in the matter and investigation was commenced. The injured person, after recovery, was discharged from SKIMS on 28.07.2013. The Investigating Officer concluded the investigation and proved the offences against five accused persons under Sections 147, 341, 354 and 323 RPC. The accused persons were arrested in the instant case and later released on bail bonds. The investigation of the case was closed as challan against five accused persons and the charge sheet was produced before the competent court. On 04.08.2013, the Police Station, Sopore, received an information, though telephonically, that injured Javid Ahmad Hajam has become unconscious at his residence and was shifted to SDH, Sopore, for medical treatment where doctors declared him brought dead and on the basis of this information, a detailed report vide DD No.32 dated 04.08.2013 was entered in the Daily Diary of P/S Sopore. On receipt of FSL report, it was found that the cause of death was due to 'organ phosphorus insecticide' and, accordingly, a separate FIR bearing No.82/2014 under Section 309 RPC was registered and investigation of the said case was closed on 15.07.2014 as untraced.

4) Mr. Qureshi, learned senior advocate, argued that the petitioner was forced to handover possession of the land and to pay an amount of Rs.7.00 lacs by the respondents No.4 and 5 illegally and also he was kept in illegal detention, as such FIR is required to be registered against the respondent Nos. 4&5.

5) Mr. Furqan, learned GA, vehemently argued that this petition is not maintainable as disputed questions of facts are involved which cannot be adjudicated upon, in a petition filed under Article 226 of the Constitution.

6) Heard and perused the record.

7) The petitioner has raised the issues which are purely disputed questions of facts which cannot be adjudicated in a writ petition filed under Article 226 of the

Constitution. In "Shubhas Jain v. Rajeshwari Shivam & Ors." 2021 SCC Online SC 562, it has been held that it is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the constitution of India, does not adjudicate hotly disputed questions of facts.

8) Otherwise also, a direction for registration of FIR against the respondents No.4 and 5 cannot be issued in this petition, as the petitioner can avail equally efficacious remedy for registration of FIR by approaching the Magistrate concerned. Reliance is placed on the judgment of the Supreme Court in the case of "Sakiri Vasu vs. State of UP and others", (2008) 2 SCC 409.

9) Viewed thus, the present petition is dismissed with liberty to the petitioner to avail the appropriate remedy available under law.