
(2011) 06 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : 561-A No. 27 of 2009

Gh. Mohammad Rather and Others	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Citation : (2011) 3 JKJ 134

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Learned counsel for respondents 1 to 3 filed status report in the open court, made part of the file.

FIR No. 28/2009 under Sections 420, 468, 471 was lodged in P/S Bijbehara, and investigation was handed over to Crime Branch. It appears

that investigation is almost complete. It is apt to reproduce relevant portion of the status report herein:

2. That consequently a case FIR No. 28/2009 u/s 420, 468, 471 was lodged and the investigation was set in motion. The investigation was

handed over to the respondent. The statement of witnesses were recorded u/s 161-A CrPC. The original record was therefore seized and FSL

opinion was also obtained, which proved the offences u/s 420, 468, 471 RPC and also during the investigation section 120-B RPC has been

added, and the said offences have also been proved against the accused persons.

2. The question is as to whether the F.I.R. containing allegations, which set the police in motion, can be quashed at this very thresh-hold stage? The

answer is in negative for the following reasons.

It is apt to reproduce Section 561-A Cr.P.C. herein:-

561-A. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give

effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

3. This remedy can be invoked / pressed into service or may be exercised in the following circumstances:-

- (i) To pass orders in order to give effect to an order passed under Cr.P.C;
- (ii) to prevent abuse of process of Court;
- (iii) to otherwise secure the ends of justice; and
- (iv) to prevent mis-carriage of justice.

4. Keeping in view the allegations contained in the F.I.R. by no stretch of imagination it can be said that the case of petitioner falls within the ambit/contours of Section 561-A Cr.P.C.

5. Apex Court in the cases reported in R.P. Kapur Vs. The State of Punjab, ; AIR 1964 SC 01; Hazari Lal Gupta Vs. Rameshwar Prasad and

Another, etc., ; Jehan Singh Vs. Delhi Administration, ; State of Karnataka Vs. L. Muniswamy and Others, ; Kurukshetra University and Another

Vs. State of Haryana and Another, ; State of Bihar and Another Vs. J.A.C. Saldanha and Others, ; AIR 1989 SC 01; Dhanalakshmi Vs. R.

Prasanna Kumar and Others, ; State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; State of Haryana and others Vs. Ch. Bhajan Lal

and others, ; AIR 1992 SC 892; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; State of U.P. Vs. O.P. Sharma, ;

Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, ; State of Kerala and Others Vs. O.C. Kuttan and Others, ; Rajesh Bajaj Vs.

State NCT of Delhi and Others, ; State of Karnataka Vs. M. Devendrappa and Another, ; State of Andhra Pradesh Vs. Golconda Linga Swamy

and Another, ; State of U.P. and Others Vs. Ram Bachan Tripathi, ; AIR 2008 SCW 1003; 2008 AIR SCW 1993; AIR 2008 SCW 1998; 2008

AIR SCW 4614; 2008 AIR SCW 7680; 2008 AIR SCW 2778; M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another, has discussed

the scope of Section 561-A Cr.P.C. corresponding to Section 482 Cr.P.C. of Central Code and has laid down the following tests:

1. Where the allegations made in the first information report or the complaint even if 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 u/s 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 Magistrate as contemplated u/s 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.

6. Apex Court also held that power is to be exercised cautiously, carefully and sparingly and Court has not to function as a Court of appeal or

revision. It has also laid down the parameters and guidelines in cases titled as K.L.E. Society & Ors. v. Siddalingesh reported in 2008 AIR SCW

1993; A.P. v. Bajjoori Kanthaiah reported as 2008 AIR SCW 7860 and Reshma

Bano v. State of Uttar Pradesh reported in 2008 AIR SCW 1998.

7. This Court has only to ascertain whether the allegations made in the F.I.R. do disclose or do not disclose the commission of offences, if it does, then it cannot be quashed at its thresh-hold stage. It is not proper to scuttle away the investigation enroute. Court should also not interfere with the investigation which would amount to stalling the investigation and jurisdiction of statutory authorities to exercise powers in accordance with the provisions of Code of Criminal Procedure.

8. Apex Court in case titled as R.P. Kapur Vs. The State of Punjab, and case titled State of Andhra Pradesh Vs. Golconda Linga Swamy and

Another, has laid down the same principle. It is apt to reproduce para 8 of the judgment reported in State of Andhra Pradesh Vs. Golconda Linga

Swamy and Another, herein:-

8.....The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on

oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that

the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an

information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is

the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides

against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

9. Keeping in view the status report and the allegations contained in the FIR, no case is made out for interference.

Having glance of the above discussion, this petition merits dismissal and dismissed as such.