

(1999) 04 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : 561-A No. 28 of 1998

Gh.Mohi-ud-Din Sheikh

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 561A

Citation : (1999) 4 Crimes 198 : (2000) KashLJ 10

Hon'ble Judges : G.L.Raina, J

Bench : Single Bench

Advocate : R.A.Khan, I.Sofi, Advocates appearing for the Parties

Judgement

1. Inherent powers stemming from section 561A Cr. P. C. are invoked so as to quash FIR No. 43/1998 registered at Police Station Handwara

and to arrest the investigations thereon. The grounds on which the jurisdiction is invoked are briefly put as under:

A complaint for the offences under section 465 and 467 Cr. P. C. was laid by the nonpetitioner herein, Gh. Rasool Wani, in the court of Chief

Judicial Magistrate, Handwara. This happened on 26/3/1998. The Chief Judicial Magistrate recorded the statement of the complainant and other

witnesses thereabout referred it under section 202 Cr. P. C. to the S. P. O. of his court for inquiry. The S. P. O. furnished the report whereon the

Chief Judicial Magistrate took cognizance of the occurrence on 4/9/98 against four of the five accused persons. The petitioner herein who had been

arraigned as the coaccused in the complaint, was left out by not being summoned by the Chief Judicial Magistrate.

Having filed the complaint the complainant, Gh. Rasool Wani, laid the information report about the occurrence with the police stationed at

Handwara whereat the case FIR quoted above came to be registered for the offences punishable under section 419,467 and 109 R. P. C. The

investigation in the case is pending.

The petitioner herein projects his case, for intervention under section 561A Cr. P. C. that as the court had refused to take cognizance of the

occurrence in respect of his involvement in the commission of the alleged offences, so the police could not have registered the case about that very

occurrence whereabouts the Magistrate had taken the cognizance and not arraigned the petitioner as the coaccused. It is on this reasoning that the

quashment of the FIR is sought.

Chapter 5 of the Code of Criminal Procedure deals with the information to police and their powers of investigating the cases. Section 154 provides

that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced

into writing by the officer in charge and be read over to the informant which shall be signed by him. The substance of information, oral or written, is

required to be entered in a book to be kept by such officer and the copy of the information as recorded has to be provided to the informant,

against a proper receipt. Section 155 prescribes the procedure when the information is given to the incharge of the police station of the

commission, within the limits of such station, of a noncognizable offence. Section 156 provides that any officer I/C Police Station may investigate

any cognizable case, with or without the order of Magistrate of the local area within whose local limits such police station is located. Section 157

provides the procedure for investigation where commission of a cognizable offence is suspected by an officer in charge of the police station. It

mandates that if from information received or otherwise an officer in charge has a reason to suspect the commission of an offence which he is

empowered under section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such

offence upon a police report and shall proceed or depute one of his subordinate officers to investigate the facts and to take measures for the

discovery and the arrest of the offender. It is only on the basis of reason to suspect the commission of an offence that the incharge police officer

registers the case and investigate it.

Section 190 of the Code empowers the Chief Judicial Magistrate or any other Judicial Magistrate, specially empowered in that behalf, to take

cognizance of any offence upon receiving a complaint of facts which constitute such offence, or upon a report in writing of such facts made by the

police officer.

It is thus rightly contended that section 157 of the Code clothes the officer in charge of the police station not only to register the case about the

commission of a cognizable offence but further empowers him to investigate the facts and circumstances that constitute the offence and after

completion of investigation, the officer in charge is obliged by section 173 of the Code to forward the report of investigation to the Magistrate

competent to take cognizance.

This is one mode of investigations into the commission of the cognizable offence(s). Section 190 of the Code on the other hand provides the mode

of taking cognizance in cognisable or noncognisable offence(s). The section empowers the Magistrate to take cognizance of any offence upon any

information received from any person, other than a police officer, or upon his own knowledge or suspicion, that such an offence has been

committed.

There is nothing in the Code which can prevent the officer in charge of the police station from registering a case, even if a complaint of the facts

constituting such offence has been already filed laid before the Judicial Magistrate competent to take cognizance thereabout under section 190. The

argument is thus well based that the police is not debarred to register a case and investigate it when it receives such an information whereon

suspicion of the commission of a cognizable offence arises. Yet again there is no bar for a Magistrate to take cognizance of an offence or to

proceed to take cognizance upon receiving a complaint or upon a report of investigation filed by police or upon his own knowledge that an offence

has been committed.

This proposition of law is amplified by the provisions of section 205E of the Code which provides:

1. When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate,

during the course of the inquiry or trial held by him, that an investigation by the

police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

2. If a report is made by the investigating Police Officer under section 173 and on such report cognizance of any offence is taken by the Magistrate

against any person who is accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the

3. Police report as if both the cases were instituted on a police report. 3. If the police report does not relate to any accused in the complaint case

or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by

him, inaccordance with the provisions of this code.

The aforesaid provisions go to show that the police can register and investigate the case of a cognizable offence notwithstanding that a complaint

thereabout is made to the Judicial Magistrate. The section mandates that when such a position is brought to the notice of the Magistrate, during the

inquiry/trial of a case instituted otherwise than on a police report, that an investigation by the police is in progress in relation to the offence which is

the subject matter of the trial held by him, the Magistrate shall stay the proceedings of such inquiry/trial and call for a report on the matter from the

police officer conducting the investigation. The section further provides that if report under section 173 of the code is filed by the police and the

Magistrate takes cognisance on the report then the Magistrate shall inquire or try together the complaint case and the case arising out of the police

report, as it both the cases were instituted on a police report.

On the touch stone of the above legal provisions it cannot be countenanced that filing of the complaint with respect to the commission of the

offences punishable u/s 465 and 467 RPC against the persons, including the present petitioner, can be a ground to bar the jurisdiction to investigate

the case on the same facts and accusation, on which the complaint is based, he pendency of the complaint case before the Magistrate does not

debar the registration and investigation of the case on those very facts which are said to constitute the offence covered by the complaint. The

course to be adopted in such a situation is that the Magistrate shall stay the inquiry or trial in the complaint case and call for the report u/s 173 and

thereafter proceed to try together the report and the complaint as if the complaint case was also a report of investigation filed by the police.

Now to the facts and the circumstances whereon the quashment of the FIR and the investigation is sought.

As referred to above the Magistrate has taken cognizance of the occurrence against four of the accused in the complaint case and has not

proceeded against the present petitioner. It was much prior to the taking of the cognizance on the complaint case that the police had registered the

case against all the five accused person on 11.4.98. It is in this circumstance not open to interfere with the investigation by the quashment of the

FIR. Let the police have the free hand, of course to be overseen by the local Judicial Magistrate, to investigate into the circumstances and facts on

which the FIR has been registered. The Magistrate having taking cognizance against four of the accused persons on the basis of the complaint filed

by the complainant/informant Gh. Rasool Wani, has to stay the inquiry/trial in the complaint case till the report of investigation under section 173 is

filed by the police in respect of the above said FIR.

I find no reasons present to sustain the argument that the pendency of the complaint case before the Magistrate in relation to the offences which are

subject matter of the inquiry/trial held by him, is a bar for the police to register the case and to investigate into the subject matter of the information

received about the commission of the cognizable offences.

No ground is made out herein to sustain the plea that the registration of the case by the police tantamount to the abuse of process of law or that the

grounds are made out to quash, the FIR and the investigation therein, to secure the ends of justice. Registration and investigation of the case against

the petitioner alongwith other persons against whom cognizance has been taken in the complaint case, does not effect any of the rights of the

petitioner, nor can it be said that the ends of justice will be secured by quashing the FIR.

17. For the reasons said above this petition is dismissed as misconceived. The learned Magistrate be informed of this order.