

(2018) 11 J&K CK 0075

In the Jammu And Kashmir High Court

Case No : Misc Criminal Cases (CRMC) No. 421 Of 2018, IA No. 01 Of 2018

Ghulam Din Malik And Others @APPELLANT@Hash State Of Jammu & Kashmir And A Nother

Date of Decision : 03-11-2018

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Indian Penal Code, 1860 — Section 323, 354, 379, 436, 447, 506
Code Of Criminal Procedure, 1973 — Section 156(3), 482
Code Of Civil Procedure, 1908 — Order 26 Rule 9, Order 39 Rule 7

Citation : (2018) 11 J&K CK 0075

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Sameer Hassan

Final Decision : Dismissed

Judgement

1. By the medium of this petition filed under Section 561_A Cr. PC, the petitioners have sought the indulgence of this Court in quashing the FIR bearing No. 44/2018 dated 13.03.2018 and FIR No. 177/2018 dated 23.10.2018, registered against them at Police Station Delina Baramulla, for the commission of an offence punishable under Sections 447, 506, 427, 354, 379, 323, 436A, along with the proceedings emanating therefrom.

2. Aggrieved by the registration of the FIRs, numbered above the petitioners have challenged its vires on the grounds inter alia that the respondent No. 2, being an influential person implicated the petitioners and others in a false and frivolous criminal case bearing FIR No. 44/2018 and 177/2018 under Sections 323, 354, 379, 447, 506, 436 (A), registered at Police Station Delina and both the FIRs have been registered on the same subject matter. It is further submitted that how the police agency can book the petitioners under the aforesaid Sections, when this Court in OWP No. 1118/2018 had protected the possession of the land in question of the petitioners by directing the parties to maintain status quo. It is settled law 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, the same would be liable to be set aside to prevent the abuse of the process of any court or otherwise to secure the ends of justice. It is apt to mention here that from the very inception the petitioners have taken a stand that the land in question has been partly in possession of the petitioners. In order to ascertain the factum of actual possession on spot of the suit land, the petitioners filed application in terms of Order 26 Rule 9 read with Order 39 Rule 7 of the Code of Civil Procedure for appointment of commissioner for local investigation and to report before the Court of Sub Judge, Baramulla, about the present status of the suit property. However, the respondent No. 2, defendant therein opposed in the application for appointment of Commissioner which is sub-judice before the Court of Sub Judge, Baramulla, clearly shows that they are not in an exclusive possession. Therefore, the stand taken by the respondent No. 2 in an FIR that the petitioners have committed criminal trespass in the suit land is nothing less than a fraud, aimed entirely at usurping the property to which the petitioners are entitled.

3. The petitioners have annexed with the petition, copy of revenue extracts; copy of mutation attested on 19.07.2017; Order of Assistant Commissioner (Revenue), directing that the suit property be not transferred to any third party till further orders; copy of suit filed before Civil Court at Baramulla, copy of written statement, copy of application presented under Section 156 (3) Cr. PC by respondent-Ghulam Qadir Bhat, before the Judicial Magistrate, Baramulla; copies of FIR Nos. 44/2018 & 177/2018, copy of order passed in OWP NO. 1118/2018 in IA No. 01/2018, directing the parties to maintain status quo.

4. The learned counsel for the petitioners strongly urged that the FIRs registered by Police concerned requires to be quashed. Till the other side files objections/ response, the operation of the investigation in the case be stayed. He has relied upon some judgment titled Joseph Salvaraj A. v. State of Gujarat and Others, Inder Mohan Goswami & Another v. State of Uttrachanchal & Others, Anju Chaudhary v. State of U.P. & Another and State of Haryana & Others v. Ch. Bhajan Lal and Others, which according to him support the pleas raised in the petition for quashment of proceedings.

5. Heard whatever has been stated by the learned counsel at Bar in the light of material placed before me. The facts remain that the investigation of the case is admitted by the petitioner herein to have not been finalized. No finding of any Civil Court or other forum has been annexed with in support of the petitioners suggesting a conclusive finding having been recorded in favour of petitioners about the possession of the land in question. 'Status quo' ordered without hearing other side to be maintained on spot as ad-interim relief being contended does warrant the criminal proceedings to be not initiated, is legally fallacious.

6. Hon'ble Apex Court in State of Orissa v. Suraj Kumar Sahoo, reported in (2005) 13 SCC 540, has sounded a note of caution regarding the power of High Court to be exercised in terms of Section 561-A Cr. PC, corresponding to Section

482 of Central Code. Their lordships enunciated that the High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, being of magnitude and cannot be seen in their true perspective without sufficient material before the Court. While exercising inherent jurisdiction as observed their lordships is not permissible for the Court to act as if it was a trial Court. It would be none of the duties of the High Court to appreciate the evidence to conclude whether the material produced are sufficient or not for holding the accused guilty.

7. It need not to be reiterated as same being settled law, that inherent jurisdiction under Section 561-A Cr. PC, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. Exercise of power thus in its nature is an exception and not a rule.

8. Having regard to what has been stated in the petition, I am of the opinion that the High Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIRs. The facts put forth by the petitioners are half backed and it would be premature at this stage to frame an opinion as to the vexatious nature of the allegations as sounded in the petition consequent upon which the inherent powers might had to be exercised. In this background, the petition of the petitioners entails its dismissal and is, accordingly, dismissed in limini.