
(2017) 07 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : 239 of 2016

Ghulam Qadir Badder & Anr.

APPELLANT

Vs

State of J&K and Anr.

RESPONDENT

Date of Decision : 12-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 561A](#)

Citation : (2017) 07 J&K CK 0004

Hon'ble Judges : Ali Mohammad Magrey

Bench : SINGLE BENCH

Advocate : Arshad Ahmad, P.S. Ahmad, Syed Manzoor Ahmad, B.A Dar, Nisar H. Ladakhi

Final Decision : Dismissed

Judgement

1. These petitions under Section 561-A Cr. P. C., have been filed by the respective petitioner(s) seeking quashment of FIR(s) registered against them at different Police Stations.

2. The brief facts of each of the connected cases are as follows:

561-A No. 239/16

The petitioners have been booked by police station Shaheedgunj Srinagar on an accusation of having committed offences punishable under

sections 341, 354, 323 & 34 RPC in terms of FIR No. 37 of 2016. It is stated that petitioners are innocent and have been falsely implicated in

vengeance at the instance of respondent No.2, who is stated to be the son of the petitioner No.1 and brother of petitioner No.2. It is stated that

the facts of the case, as reflected in complaint and reproduced in the FIR, are consistent with the innocence of the petitioners as the

complainant/respondent No.2 has also failed to produce any independent witness before the Investigating Officer. The perusal of the grounds

raised in the petition with reference to seeking quashment of the FIR is nothing, but a sheer repetition of what has been stated hereinabove, i.e. the

complaint does not disclose the commission of offences as reflected in the complaint. On the strength of allegations made in the complaint

supported by the statement of the complainant and the witness, the learned Magistrate has, prima facie, reached to a conclusion that the

commission of offence is made out, therefore, while following the procedure, has taken cognizance of the complaint and issued the process. Law

on the subject is no more res integra that mere cognizance of the complaint and the issuance of the process does not curtail any of the rights of the

accused who is treated to be accused till his guilt is proved. Learned counsel for the petitioners could not convince the Court with reference to the

abuse of process of law made by the learned Magistrate while taking cognizance and issuing process, which could form a ground for interfering

with the matter in exercise of powers conferred by Section 561-A.

561-A No. 180/2017;

In the instant petition, the petitioners seek quashment of FIR No. 78/2017 registered in Police Station, Kulgam under Sections 452, 392, 506

RPC on the complaint of the respondent No.2. The petitioners, as stated, submit that they have been falsely implicated in vengeance at the instance

of the respondent No.2 and the complaint does not make out a case for the commission of the offences as reflected in the complaint. The perusal

of the grounds raised in the petition with reference to seeking quashment of the FIR is nothing, but a sheer repetition of what has been stated

hereinabove, i.e. the complaint does not disclose the commission of offences as reflected in the complaint. On the strength of allegations made in

the complaint supported by the statement of the complainant and the witness, the learned Magistrate has, prima facie, reached to a conclusion that

the commission of offence is made out, therefore, while following the procedure, has taken cognizance of the complaint and issued the process.

Law on the subject is no more res integra that mere cognizance of the complaint and the issuance of the process does not curtail any of the rights of

the accused who is treated to be accused till his guilt is proved. Learned counsel

for the petitioners could not convince the Court with reference to the abuse of process of law made by the learned Magistrate while taking cognizance and issuing process, which could form a ground for interfering with the matter in exercise of powers conferred by Section 561-A.

561-A No. 179/2017;

Through the medium of instant petition, the petitioners seek quashment of FIR bearing No. 96/2017 registered in Police Station, Kulgam under

Sections 451, 392, 341 & 506 RPC. According to the petitioners, the relations in between the complainants and the petitioners is stranded and

marooned due to some property dispute and that they have been falsely implicated in the instant FIR at the instance of the respondent No.2. The

petitioners submit that the facts of the case, as reflected in the complaint and reproduced in the FIR, are consistent with the innocence of the

petitioners as the complainant/ respondents have failed to produce any independent witness before the Investigating Officer. The perusal of the

grounds raised in the petition with reference to seeking quashment of the FIR is nothing, but a sheer repetition of what has been stated

hereinabove, i.e. the complaint does not disclose the commission of offences as reflected in the complaint. On the strength of allegations made in

the complaint supported by the statement of the complainant and the witness, the learned Magistrate has, prima facie, reached to a conclusion that

the commission of offence is made out, therefore, while following the procedure, has taken cognizance of the complaint and issued the process.

Law on the subject is no more res integra that mere cognizance of the complaint and the issuance of the process does not curtail any of the rights of

the accused who is treated to be accused till his guilt is proved. Learned counsel for the petitioners could not convince the Court with reference to

the abuse of process of law made by the learned Magistrate while taking cognizance and issuing process, which could form a ground for interfering

with the matter in exercise of powers conferred by Section 561-A.

561-A No. 213/2017;

By dint of the instant petition, the petitioners seek quashment of FIR bearing No. 79/2017 registered in Police Station, Kulgam, under Sections

447, 379, 392, 354 RPC. The petitioners plead that the instant FIR has been lodged against the petitioners with malafide intention and design by

one Parveen Akhtar at the behest of her husband, namely, Tariq Badar, who happens to be the brother of petitioner Nos. 1, 3 and 4 and son of petitioner No.2, in order to pressurize them for settlement of the land dispute pending between the parties. It is submitted by the petitioners that the story projected in the instant FIR is totally based on bogus facts without any legal sanctity. The perusal of the grounds raised in the petition with reference to seeking quashment of the FIR is nothing, but a sheer repetition of what has been stated hereinabove, i.e. the complaint does not disclose the commission of offences as reflected in the complaint. On the strength of allegations made in the complaint supported by the statement of the complainant and the witness, the learned Magistrate has, prima facie, reached to a conclusion that the commission of offence is made out, therefore, while following the procedure, has taken cognizance of the complaint and issued the process. Law on the subject is no more res integra that mere cognizance of the complaint and the issuance of the process does not curtail any of the rights of the accused who is treated to be accused till his guilt is proved. Learned counsel for the petitioners could not convince the Court with reference to the abuse of process of law made by the learned Magistrate while taking cognizance and issuing process, which could form a ground for interfering with the matter in exercise of powers conferred by Section 561-A.

561-A No. 57/2017;

This 561-A petition is directed against the FIR bearing registration No. 232 of 2016 registered in Police Station Kulgam under Sections 341 and 323 RPC lodged on the complaint of the respondent Nos. 2 and 3. The petitioners plead that they are innocent and have been falsely implicated in the instant FIR because of vengeance and at the instance of the respondent Nos. 2 and 3. The perusal of the grounds raised in the petition with reference to seeking quashment of the FIR is nothing, but a sheer repetition of what has been stated hereinabove, i.e. the complaint does not disclose the commission of offences as reflected in the complaint. On the strength of allegations made in the complaint supported by the statement of the complainant and the witness, the learned Magistrate has, prima facie, reached to a conclusion that the commission of offence is made out, therefore, while following the procedure, has taken cognizance of the complaint

and issued the process. Law on the subject is no more *res integra* that mere cognizance of the complaint and the issuance of the process does not curtail any of the rights of the accused who is treated to be accused till his guilt is proved. Learned counsel for the petitioners could not convince the Court with reference to the abuse of process of law made by the learned Magistrate while taking cognizance and issuing process, which could form a ground for interfering with the matter in exercise of powers conferred by Section 561-A.

3. Before going to the merits of the cases in hand, the question is as to whether the FIRs containing allegations which set the police authorities in motion, can be quashed at the threshold stage? The answer has to be in the negative, for, the remedy under Section 561-A Cr. P. C. can be invoked/pressed into service only 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 secure the ends of justice: and
- (iv) to prevent mis-carriage of justice.

4. In these cases, keeping in view the allegations contained in the FIRs, it can, by no stretch of imagination, be said that the cases of petitioners fall within the ambit/contours of section 561-A Cr.P.C., as enumerated above.

5. The Apex Court in the cases reported as AIR 1960 SC 866, AIR 1964 SC 01, AIR 1972 SC 484, AIR 1974 SC 1146, AIR 1977 SC 1489,

AIR 1977 SC 2229, AIR 1980 SC 326, AIR 1989 SC 01, AIR 1990 SC 494, AIR 1991 SC 1260, AIR 1992 SC 064, AIR 1992 SC 892,

AIR 1996 SC 309, AIR 1996 SC 2983, AIR 1999 SC 3596, AIR 1999 SC 1044, AIR 1999 SC 1216, AIR 2002 SC 671, AIR 2004 SC

3967, AIR 2005 SC 3212, SLJ 2005 VOL-I 118, 2008 AIR SCW 1003, 2008 AIR SCW 1993, 2008 AIR SCW 1998, 2008 AIR SCW

4614, 2008 AIR SCW 7680, 2008 AIR SCW 2778, AIR 2010 SC 201, 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 under Section 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 under Section 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 malafide and/or where the proceedings 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. Applying the aforesaid tests laid down, it can be safely said that the entire matters are at their infancy stage and do not fall within the four corners

of the tests laid down.

7. The Apex Court also held that power is to be exercised cautiously, carefully and sparingly and the 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 Vs Bojjoori Kanthaiah"", reported as ""2008 AIR SCW 7860"" and ""Reshma Bano Vs State of Uttar Pradesh"" reported in

2008 AIR SCW 1998"".

8. This Court has only to ascertain whether the allegations made in the FIRs do disclose or do not disclose the commission of offences, and, if they do, then the FIRs cannot be quashed at its thresh-hold stage. It is not proper to scuttle away the investigation at its thresh-hold stage, and, if the FIRs disclose the commission of offences, High Court should 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 criminal Code.

9. The Apex Court in AIR 2004 SC 3967, AIR 1972 SC 484, AIR 1974 SC 1446, AIR 1977 SC 2229 and AIR 1989 SC 01, has laid down the same principle. It is apt to reproduce Paragraph Nos.10, 13, 14, 15, 17 & 19 out of the judgment titled ""Som Mittal Vs Govt. of Karnataka reported in ""2008 AIR SCW 1003"" herein:

10. In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly with circumspection and in rarest of rare cases. Exercise of inherent power under section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

13. In State of Bihar v. J.A.C Saldanha (1980) 1 SCC 554 this Court pointed out at SCC P. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

14. In *Hazari Lal Gupta v Rameshwar Prasad* (1972) 1 SCC 452 this Court at SCC P. 455 pointed out:

In exercising jurisdiction under section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence

or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the

evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of

the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and

jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

15. In *Jehan Singh vs Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under section 561-A of the old Code for

quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie the allegations in the FIR if assumed to

be correct, constitute a cognizable offence.

17. In *State of Bihar vs Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be

exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon

an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

19. We may observe here that despite this Court consistently held in catena of decisions that inherent power of the High Court should not be

exercised according to whims and caprice and it has to be exercised sparingly with circumspection and in the rarest of rare cases, we often come

across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and

caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so

long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impressive but it must be noted that such power

has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power

under Section 482 is not intended to scuttle justice at the threshold.

10. While keeping in view the scope of Section 561-A Cr.P.C. the Court should refrain from making, prima facie, a decision at the interlocutory

stage when entire facts of the case are incomplete, hazy and, moreover, when the material evidence is yet to be collected and issues involved could

not be seen in their true perspective.

11. Furthermore, the Apex Court, in case titled ""R.P Kapur v. State of Punjab"" reported in ""AIR 1960 SC 866"" and case titled ""State of Andhra

Pradesh v. Golconda Linga Swamy"" reported in ""AIR 2004 SC 3967"", has laid down the same principle. It is apt to reproduce Paragraph No. 8 of

the judgment reported in ""AIR 2004 SC 3967"" herein:

8...The complaint/FIR 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 FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the

complaint/FIR is malafide, 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 malafides 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 malafides

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

12. Prima facie, it appears, that the allegations contained in the FIRs relate to the offences which are cognizable and non-cognizable, as such,

warrant investigation.

13. In view of the facts and circumstances and law quoted herein above, all these connected petitions have no merit, therefore, are, accordingly,

dismissed.

14. Registry to place a copy of this judgment on each connected file.