

(2018) 10 J&K CK 0088

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 415 Of 2018, IA No. 01 Of 2018

**Harjeet Singh And Ors @APPELLANT@Hash State Of Jammu & Kashmir
And Ors**

Date of Decision : 26-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 154(1), 154(3), 156(3), 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 302

Citation : (2018) 10 J&K CK 0088

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Ajay Sharma, Parvinder Singh

Final Decision : Allowed

Judgement

1. The instant petition has been filed against the order dated 22nd May, 2018, passed by the Chief Judicial Magistrate, Jammu, in Complaint titled, "Ranjeet Singh Vs. King Pal Singh and ors." by virtue of which respondent No.2 has been directed to register second FIR against the petitioners in terms of Sub-Section (3) of Section 156 of the Code of Criminal Procedure.

2. In the petition, it has been stated, that the petitioners are aggrieved of the order dated 22nd May, 2018, which has been passed by the Chief Judicial Magistrate, Jammu (hereinafter referred to as "the Magistrate). The said order was passed by the Magistrate on the Complaint of respondent No. 3 by taking recourse to Sub-Section (3) of Section 156 of the Code of Criminal Procedure (hereinafter referred to as "the Code). By virtue of the said order, respondent No.2 has been directed to lodge second FIR against the petitioners. The entire Complaint along with annexure has been forwarded to respondent No.2 for taking necessary action. The said Complaint has arisen out of FIR No.259 of 2017, registered by the respondent No. 2 against respondent No. 3. On 07th November, respondent No. 3 and his son, namely, Puneet Singh attacked one-Charanjeet Singh S/o Moti Singh. In the said attack, Charanjeet Singh sustained gunshot injury. That apart, Puneet Singh and few others also received gunshot

injuries due to the shots fired by the respondent No.3. In this scuffle, respondent No. 3, i.e., Ranjeet Singh also sustained injury. On the demise of Charanjeet Singh, respondent No. 3 was taken into custody on 10th November, 2017 in FIR no. 259/2017 u/s 302/RPC 3/25/30 Arms Act and from his possession, the weapon of offence was also recovered. However, his son-Puneet Singh ever since the date of occurrence has absconded and not yet arrested. The occurrence was witnessed by the petitioners and, as such, they were cited as eye witnesses in the Challan.

3. Learned counsel for the petitioners submits that after completion of the investigation, Challan was produced in the Court of law and is pending trial in the Court of Additional Sessions Judge, Jammu under Section 302 of the RPC. During the investigation of the aforesaid case, respondent No. 2, i.e., Station House Officer, Police Station, Bahu Fort, Jammu also investigated the matter in respect of the injury sustained by respondent No. 3. In this direction, statement of petitioner No.4 was recorded. While respondent No. 3 was facing trial before the Trial Court, he after a span of more than six months of the date of occurrence filed a Complaint before the Magistrate, alleging therein that on the day of occurrence he had been assaulted by the petitioners and as a consequence whereof, he had sustained head injury. On the said Complaint, the Magistrate by taking recourse to Sub-Section (3) of Section 156 of the Code, directed respondent No.2 to register FIR against the petitioners. The Magistrate on the same day, i.e., on 22nd May, 2018 itself forwarded in original the entire Complaint with annexure and order dated 22nd May, 2018 to the respondent No. 2 for necessary action. In his Complaint, the respondent No. 3 willfully concealed the vital facts qua the gunshot injuries sustained by his son and some passerby. Respondent No.3 also concealed the fact that with regard to the injury sustained by him the matter had already been thoroughly investigated by the respondent No.2. Since the injury sustained by him and the main occurrence of murder were the parts of the same transaction, as such, the direction for the second FIR passed pursuant to the order impugned was not permissible under law. For the reasons stated above, the petitioners are not in a position to furnish before this Court the certified copies of the aforementioned record. However, self-attested copies of the entire record are enclosed herewith for the kind perusal of this Court. The respondent No. 3 also concealed the factum of pendency of the murder case against him in the Trial Court. That apart, prior to the filing of his Complaint, respondent No. 3 should have followed the mandate of law and annexed the documents with the Complaint.

4. Learned counsel for the petitioners further submits that the Magistrate ought not to have passed the order impugned in the absence of the relevant documents, as envisaged by Sections 154 (1) and 154 (3) of the Code in violation of the law declared by the Hon'ble Supreme Court in case reported as AIR 2015 SC 1758. The respondent No. 3 has filed the Complaint against the petitioners in a routine manner with unclean hands only in order to harass them and pressurizing them not to depose against him and his son before the Trial

Court in a murder case. Respondent No. 3 has deliberately omitted to array respondent Nos.1 and 2 as parties in the Complaint. The Complaint against the petitioners has been filed by the respondent No. 3 with malafide intention and instituted maliciously with and ulterior motive. The aforesaid impugned order has been passed by the Magistrate in a mechanical and routine manner against the mandate of law and in violation of the law declared by the Hon'ble Supreme Court of India. The said impugned order, thus, tantamounts to abuse of process of the Court and is liable to be set aside.

5. I have heard both counsel; counsel for petitioners has reiterated the grounds taken in memo of petition, whereas counsel for respondent has supported the order impugned.

6. Bare perusal of certified copy of challan, FIR no. 259/2017 u/s 302/RPC 3/25/30 Arms Act, it is evident that complainant/ respondent no.3, is facing trial in serious offence of murder; petitioners herein have been cited as eye witnesses in this case. The occurrence is dated 07.11.2017; respondent no.3 and his son have been involved in the case; Son of respondent no.3 is absconding.

7. Perusal of photocopy of impugned complaint, it is evident that the date of occurrence has also been mentioned as 07.11.2017; but certain facts mentioned in complaint have been exaggerated by way of clever drafting, in order to create illusion of criminal cause of action; but if all the facts mentioned in the complaint, taken as whole and read along with attending circumstances of case, it is evident that complaint has been filed with mala-fide intentions for putting pressure on petitioners, who are eye witnesses in murder case against complainant. Even this complaint has been filed after more than six months of occurrence and no sufficient explanation has been given. Further no compliance of section 154 Cr.P.C. has been made. Section 154 Cr.P.C reads as under:-

"154. Information in cognizable cases.

(1) 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 to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or

direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

8. In terms of this section, Incharge P/S, is duty bound to register the FIR on receiving of information of cognizable offence; if I/C P/S refuses to register the FIR then complaint has to be made to superintendent of police concerned; thereafter if no action is taken, then complainant has liberty to approach the Magistrate. In present case, although it has been written that police has not taken action despite lodging report; but no evidence in this regard has been annexed.

9. The Supreme Court in the case of *Rishipal vs State of U.P. & Anr.*, reported in AIR 2014 SC 2567 has held that it is no doubt true that the Courts have to be very careful while exercising the power under Section 482 Cr.P.C. At the same time, the Courts should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold.

10. The factual position as highlighted above clearly goes to show that the complainant had not come to Court in filing compliant with clean hands; instead he has filed complaint in order to put pressure on petitioners who are allegedly eye witnesses in a murder case against him and his son. The complaint is vexatious and thus, has been filed to settle his score by setting criminal law in motion.

11. In view of above, this petition is allowed, the order impugned passed by Magistrate and complaint as a whole, are quashed.