

**(2022) 06 J&K CK 0010**

**In the Jammu And Kashmir High Court**

**Case No : Criminal Miscellaneous Cases (M) No. 02 Of 2021**

Irfan Ahmad Mir

APPELLANT

Vs

Government Through P/S Sopore

RESPONDENT

**Date of Decision : 03-06-2022**

**Acts Referred:**

Indian Penal Code, 1860 — Section 323, 341, 500, 506

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

**Citation : (2022) 06 J&K CK 0010**

**Hon'ble Judges : Sanjay Dhar, J**

**Bench : Single Bench**

**Advocate : Salih Pirzada, Ilyas Nazir Laway**

**Final Decision : Allowed**

## **Judgement**

Sanjay Dhar, J

1) The petitioner has challenged FIR No.276/2020 for offences under Section 323, 341, 500, 506 IPC registered with Police Station, Sopore.

2) Before coming to the grounds of challenge projected by the petitioner, it would be apt to refer to the contents of the impugned FIR. On 03.10.2020, respondent No.2/complainant lodged a complaint with Police Station, Sopore, alleging therein that she was approached by the petitioner through a middleman with a marriage proposal about 30 days ago. It was further alleged that on 26th August, 2020 a meeting between her and the petitioner took place at Hotel Plaza, Sopore, but she did not find the petitioner suitable for herself and, accordingly, she rejected the proposal of marriage, which infuriated the petitioner. According to the complainant, as soon as they were getting down the stairs, the petitioner pushed her hard from the back, as a result of which she fell down and got injured. It was further alleged that the petitioner called her on telephone and abused her as well as her family members and she was also threatened by the petitioner. It was also alleged that the petitioner has started spreading false

claims regarding her character thereby defaming her. It was also alleged that the petitioner has hurt the sentiments of respondent No.2/complainant and she has been mentally harassed.

3) On the basis of aforesaid allegations, the impugned FIR was registered and investigation was set into motion. A perusal of the Case Diary reveals that during investigation of the case, statement of respondent No.2/complainant and certain other witnesses have been recorded whose statements are on same lines as given in the impugned FIR.

4) It has been contended by the petitioner that the allegations made in the impugned FIR are false and the same have been made against the petitioner in order to wreak vengeance upon him as he has spurned the marriage proposal of respondent No.2/complainant. It is further contended that respondent No.2/complainant had approached the Women's Police Station, Rajbagh Srinagar, and an enquiry was conducted by the said Police Station, whereafter the complaint lodged by her was found to be false. On this ground, it is urged that the impugned FIR deserves to be quashed. It has also been contended that the allegations made in the impugned FIR do not make out any offence against the petitioner.

5) I have heard learned counsel for the parties and perused the material on record including the Case Diary.

6) A perusal of the impugned FIR and the statement of respondent No.2/complainant recorded during investigation of the case would reveal that she has alleged that the petitioner, because of her refusal to accept the marriage proposal, got infuriated and when they were coming out of the hotel, she was pushed down the stairs by the petitioner which resulted in injuries to her. Her other allegation is that the petitioner threatened her by making telephone calls and he also spread defamatory remarks with regard to her character. From these allegations, offences under Section 341, 323, 500 and 506 IPC are, prima facie, disclosed.

7) In the impugned FIR, the police has added offence under Section 341 IPC, which relates to offence of wrongful restraint. Neither in the complaint nor in her statement recorded during investigation of the case, respondent No.2/complainant has made a whisper that she was wrongfully restrained by the petitioner. In these circumstances what is disclosed from the contents of the complaint, even if the same along with the material collected by the investigating agency during the investigation are taken at their face value, are the offences under Section 323, 500 and 506 IPC. All these offences are non-cognizable in nature.

Therefore, it was not open to respondent No.1 to register an FIR and undertake investigation without the permission of the Magistrate. In the instant case, no permission has been accorded by the Magistrate to respondent No.1 to undertake investigation of the case. Thus, registration of the impugned FIR and undertaking

investigation on the basis of the said FIR by respondent No.1 is without jurisdiction, inasmuch as the report that was lodged by respondent No.2/complainant before the police discloses commission of only non-cognizable offences. As per provisions contained in Section 155 of the Cr. P. C, respondent No.1 could not have investigated the case without the order of a Magistrate having power to try such case, which, in the instant case, has not been obtained by respondent No.1

8) The Supreme Court in the case of State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335, has, while illustrating the kind of cases wherein power under Section 482 of Cr. P. C should be exercised, held that where the allegations in the First Information Report and other material accompanying the FIR do not disclose a cognizable offence, justifying an investigation by a police officer under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code, the FIR and the proceedings emanating therefrom deserve to be quashed.

9) As already stated hereinbefore, the material on record and the impugned FIR do not disclose commission of any cognizable offence against the petitioner, as such, the impugned FIR and the proceedings emanating therefrom are liable to be quashed.

10) For the foregoing reasons, the petition is allowed and the impugned FIR and the proceedings emanating therefrom are quashed. It shall, however, be open to respondent No.2/complainant to avail appropriate remedy as may be available to her under law.

11) The Case Diary be returned to the learned counsel for respondent No.1.