

(2019) 03 J&K CK 0078

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 133 Of 2018 IA No. 01 Of 2018

Jai Kumar And Ors

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 323, 336, 427, 447, 504, 506
Code Of Criminal Procedure, 1973 — Section 155(2), 156(3), 482
Protection of Women from Domestic Violence Act, 2005 — Section 12
Indian Penal Code, 1860 — Section 161, 165
Prevention Of Corruption Act, 1947 — Section 5(2)
Jammu And Kashmir High Court Rules, 1999 — Rule 138(3)
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 J&K CK 0078

Hon'ble Judges : Sanjay Kumar Gupta, J; Rashid Ali Dar, J

Bench : Division Bench

Advocate : Pawan Kumar Kundal, Amit Gupta

Final Decision : Allowed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C) petitioners seek quashment of FIR No.19/2018 dated 03-03-2018 registered with Police Station, Gharota, Jammu for commission of offences under Sections 447, 427, 336, 504, 506 & 147 RPC alongwith investigation conducted to involve the petitioners in a false and frivolous case.

2. Petitioners claim to be owner and in possession of the land measuring 16-Kanal falling under Khasra No.3706/2845 situated at Village Kote. The inheritance mutation of the same is attested in favour of the petitioner Nos.1 to 5. It is stated that the above said land is adjoining to the land of the respondent Nos. 4 & 5. It is further stated that the private respondents have constructed a

shop on their land; land of the petitioners is open and when petitioners wanted to fence the land, respondents started quarreling with them.

3. Learned counsel for the petitioners contends that on 19.02.2018 at about 10:00 to 10:30 AM, the petitioner No.1 was fencing his land, the private respondents and their servant kept in the shop entered in the field of the complainant and started hurling abusive languages and they attacked the petitioner No.1 and inflicted injuries on him with iron rod and threatened the petitioner No.1 that in case he came there again they would kill him. Due to the injuries caused with iron rod by Sanjeev Kumar and Sunil Kumar, bone of the left hand of the petitioner No.1 has been fractured. On 19th of February, 2018, the petitioner No.1 filed a complaint before the SHO Police Station Gharota itself and got treatment from Medical College/Hospital Jammu vide MLC No.4533 of 2018 dated 19th of Feb, 2018, and he was advised by the doctors for X-ray and after X-Ray it was found that the left hand of the petitioner No.1 has been fractured.

4. The SHO Police Station Gharota has neither taken any action against the accused nor FIR of the petitioner No.1 was registered against the accused persons. Thereafter, on 21.02.2018 petitioner No. 1 filed an application under Section 156 (3) Cr.P.C before the Chief Judicial Magistrate, Jammu. The Chief Judicial Magistrate, directed the SHO Police Station, Gharota to lodge FIR and investigate the matter under Section 156 (3) Cr.P.C. Based on the said direction, the SHO Police Station Gharota registered an FIR No.16/2018 on 27.02.2018 for commission of offences under Sections 447/323 RPC.

5. It is further case of petitioners that after registration of FIR against the accused persons/private respondents; they prepared a false and frivolous case and on 03.03.2018 filed complaint before the 2nd Addl. Munsiff (JMJC) Jammu alleging therein that on 19.02.2018 the petitioners herein forcibly tried to encroach upon complainants' land by erecting barbed wires Poles but due to interference of neighbours, they could not succeed in their plans. On this complaint court directed the SHO to proceed with the matter under law and accordingly FIR impugned has been registered.

6. The petitioners have challenged the impugned FIR No.19/2018 dated 03.03.2018, on the following grounds:-

(i) That the impugned FIR is lodged after much delay when FIR was registered against the private respondents by the petitioners. No such incident as alleged by the private respondents dt. 27-02-2018 took place.

(ii) That the allegations leveled in the complaint are general in nature and it has not been stated that which role played by which accused. So, allegations are general in nature and are leveled to satisfy the personal grudge

(iii) That the matter was purely a civil dispute but the respondent tried to give a criminal colour to the incident by false implicating the petitioners.

(iv) That wife of the Jai Kumar and Swarn Kumar are not living with them and

are separated. The wife of the Swarn Kumar filed petition under section 12 of the Domestic Violence Act for the last more than one year which is pending in the court of 3rd Addl. Munsiff, Jammu and another petition u/s 488 Cr.P.C which is pending in the court of Sub-Registrar, Jammu. When ladies are not living with their husbands the private complainant made them also accused which shows that the complaint is false and the private respondents tried to implicate whole of the family of the petitioners to harass them and thereby encroach upon the land of the petitioners.

(v) That no cognizable offence appears to have been committed from the face of the FIR or investigation conducted so far.

(vi) That the continuation of the investigation is an abuse of the process of Court.

7. The order of JMIC on the basis of which FIR No.19/2018 dated 03-03-2018 was registered with Police Station, Gharota, Jammu for commission of offences under Sections 447, 427, 336, 504, 506 & 147 RPC, reads as under:-

"Applicants along with counsel presented this application seeking direction to I/C P/S Gharota, Jammu for registration of FIR and conducting investigation in view of section 156(3) Cr.P.C. Application is duly supported by an affidavit. It is disclosed in the application that on 19.02.2018 all the above named persons forcibly tried to encroach upon complainants land by erecting barbed wires poles over complainants said piece of land which both the complainants strongly prevented and with the help and interference of neighbors, they could not succeed in their plans. Complainants were in possession of the said piece of land since long and the above named persons not only trespassed into shops of the complainants but started abusing and pelting stones on the complainants and are trying to forcibly grab that portion of land adjoining to their land, without any legal right. On 27.02.2018 theaforesaid accused persons, again started pelting stones resulting into damaging the vehicle of complainant no.2 on the same day the complainant had approached the P/S Gharota and narrated all the grievances to the I/C P/S but all in Vain. As such complainants also approached the higher authorities SDPO Akhnoor. However nothing substantial has been done till now accused persons are residing adjacent to the complainants as such there is every possibility of manhandling in future also and there is serious threat to the life and property of the complainants. The matter was timely reported to the concerned police station by the complainant. But the concerned P/S has not taken any action into the matter so far which has compelled the complainant to adopt such course of action through the medium of instant application. In view of the aforesaid facts of the case projected in the complaint, concerned SHO is directed to verify the matter and then proceed under rules. Announced 03.03.2018 2nd additional Munsiff Jammu"

8. On this order, police registered the FIR No.19/2018 u/s 447/427/336/504/506/147 RPC and investigation of the case was entrusted to IHC Vipan Kumar No.855510/EXJ.

9. I have considered the rival contentions and gone through the law on the subjects.

10. In case titled Vineet Kumar v State of U.P. reported in 2017 AIR (SCW) 1884, it has been held as under ;-

"19. We have considered the submissions made by the parties and perused the records.

20. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

21. This Court time and again has examined scope of jurisdiction of High Court under Section 482Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In paragraph 7 of the judgment following has been stated:

"7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

22. The judgment of this Court in State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335, has elaborately considered the scope and ambit of Section 482 Cr.P.C. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Section 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately

considered the scope of Section 482 Cr.P.C./ Article 226 in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain Categories of cases by way of illustration where power under 482 Cr.P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102 which enumerates 7 categories of cases where power can be exercised under Section 482 Cr.P.C. are extracted as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they 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 a 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 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."

23. A three-Judge Bench in *State of Karnataka vs. M. Devenderappa and another*, 2002 (3) SCC 89, had occasion to consider the ambit of Section 482 Cr.P.C. By analysing the scope of Section 482 Cr.P.C., this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. Following was laid down in paragraph 6:

"6.....All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

Further in paragraph 8 following was stated:

"8.....Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse

of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*."

11. After giving my thoughtful consideration to whole aspects of the matter and applying the above law, I am of the considered opinion that this petition is required to be allowed on the ground that, petitioner no.1 has already lodged FIR No.16/2018 u/s 447/323 against respondents no. 4 and 5, who are complainants in impugned FIR No.19/2018; in impugned FIR general allegations have been leveled that petitioners herein forcibly tried to encroach upon complainants' land by erecting barbed wires poles over complainants' said piece of land which both the complainants strongly prevented and with the help and interference of neighbours they could not succeed in their plans. Complainants were in possession of the said piece of land since long and the accused persons not only trespassed into shops of the complainants but started abusing and pelting stones on the complainants and are trying to forcibly grab that portion of land adjoining to their land.

12. No khasra/survey numbers of land or any other description of disputed land has been given in which alleged trespass was committed by accused; in complaint one date of alleged occurrence has been given as 19.02.2018, which is same to the alleged date of occurrence given in FIR lodged by petitioner no.1 against the private respondents herein, but in order to create an illusion of cause of action for taking criminal act, one subsequent date of occurrence has been given as 27.02.2018. It appears that this subsequent date of criminal act as on 27.02.2018 has been given only to cover up the delay in lodging FIR impugned as FIR has been lodged on 29.02.2018. The whole family of petitioners including females members has been involved in impugned FIR, without mentioning specific role played by each members and by making general averments that accused trespassed into the land and pelted stones.

13. In view of above discussion, I am of the view that impugned FIR has been lodged as counter blast to the FIR already lodged by petitioner no.1 against private respondents; impugned FIR is manifestly attended with mala fide and has been maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge. Accordingly, this petition is allowed and impugned FIR is quashed.

This judgment is pronounced by me in terms of Rule 138(3) of The Jammu & Kashmir High Court Rules, 1999.