
(2019) 04 J&K CK 0115

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 72 Of 2018, IA No. 01 Of 2018

Lalit Kumar And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 512, 538B, 538C, 538D, 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 323, 341, 432, 504, 506, 506(ii)
Code Of Criminal Procedure, 1973 — Section 154

Citation : (2019) 04 J&K CK 0115

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : S. Surinder Singh, Ravinder Gupta

Final Decision : Dismissed

Judgement

1. Heard.

2. Through the instant petition filed under Section 561-A Cr.P.C., petitioners seek quashment of FIR No. 38/2012 registered with Police Station, Basohli and Criminal Challan No.71/2015 titled, "State vs. Hans Raj and others" for offences under Sections 341, 323, 504 and 506 RPC pending in the court of learned Chief Judicial Magistrate, Kathua.

3. The brief facts of the case are that petitioner No.3 is a retired Govt. Employee as Master from the Education Department and petitioner Nos.1 and 2 are serving in the Indian Army. Presently petitioner No.1 is posted in 20 Dogra Regiment, located at Srinagar, whereas petitioner No.2 is posted in 9th Battalion Punjab Regiment, located somewhere in Punjab. Petitioner No.3 and Puran Chand S/o Nathal R/o Parnala are co-sharer in a big chunk of land situated at village Parnala, Tehsil Billawar, District Kathua and civil litigation is going on between petitioner No.3 and Puran Chand i.e. father of Amit Kumar in various Courts at

Billawar, Kathua and in this Court. In order to harass and pressurize petitioner No. 3 to withdraw the cases, Amit Kumar S/o Puran Chand filed a false report with Police Station, Billawar where real brother of Amit Kumar, namely, Vinod Kumar was posted as Constable and said Vinod Kumar managed the registration of the case against the petitioners and Maya Devi W/o Petitioner No.3 under FIR No.08/2012 for commission of offences under Sections 341, 432 and 506 RPC. The Police of Police Station, Billawar presented the charge sheet in the Court at Billawar, on 30.04.2013 which was dismissed by the learned Judicial Magistrate 1st Class, Billawar, vide order dated 02.04.2016. During trial of the said case neither complainant, Amit Kumar nor Ashok Kumar i.e. respondent No.3, who was cited in the said challan as a witness, appeared before the Court and the learned Judicial Magistrate, Billawar acquitted the petitioners on the ground that the prosecution has totally failed to prove the case and the accused and complainant are involved in litigation regarding the dispute of land.

4. It is further stated that respondent No.3 despite issuance of non-bailable warrants for seeking his appearance in the case as a prosecution witness did not choose to appear before the learned Judicial Magistrate 1st Class, Billawar. The aforesaid Amit Kumar was constructing his house and respondent No.3 was engaged by him as Mason. The aforesaid Amit Kumar got the complaint filed through respondent No.3 against the petitioners before the learned CJM, Kathua alleging therein that the accused persons have assaulted him on the bridge in between Mahanpur and Dhamalard, which falls under the jurisdiction of Police Post, Mahanpur and the alleged place of occurrence falls in the jurisdiction of Judicial Magistrate 1st Class, Mahanpur but instead of filing a report with Police Station, Mahanpur, respondent No.3 filed a complaint before the learned CJM, Kathua, who vide order dated 03.06.2012 directed SHO Police Station, Basohli to register a case without following the law laid down by the Hon'ble Supreme Court, even the complainant has not mentioned in the complaint, that before filing this complaint before the learned CJM, Kathua, he went to Police Post, Mahanpur and the learned CJM, Kathua without looking into the contents of the complaint forwarded the same to the SHO, Billawar for registration of the case against petitioners and accordingly respondent No. 2 registered an FIR No. 38/2012 for the commission of offences under Sections 341, 323, 504 and 506 RPC. Respondent No.2 presented the charge sheet after three years nine months before the learned Judicial Magistrate, Mahanpur. Section 323 RPC carries punishment of one year, Section 341 carries punishment of one month and Sections 504 and 506 RPC carries maximum punishment of two years and Section 538-B of the Cr. P.C. prescribes limitation for taking cognizance.

5. It is further contended that respondent No.2 has presented the charge sheet on 14.03.2016 and the learned Judicial Magistrate 1st Class, Mahanpur without going through the limitation period prescribed under Section 538-B of the Cr. P. C. entertained the challan and taken cognizance against the petitioners. The learned Judicial Magistrate, Mahanpur, vide order dated 26.12.2016 submitted the challan before the learned Principal Sessions Judge, Kathua for transferring

the same to any other Court and the learned Principal Sessions Judge, Kathua, instead of transferring the case to the learned Munsiff Judicial Magistrate, Bilawar, transferred the case to CJM, Kathua. The petitioners have to travel a distance of more than 120 kms to and fro and distance between the house of petitioners and alleged place of occurrence is more than 35 kms. Respondent No. 3 filed a false complaint on the instigation of Amit Kumar S/o Puran Chand who is on inimical terms with petitioners over a dispute of land. Both petitioner Nos.1 and 2 were on duty on the alleged day of occurrence but the respondent No.2 with mala fides considerations involved petitioner Nos.2 and 3 in the said case. The communication dated 09.02.2015 addressed to SDPO, Basoli by Adjutant 20 Battalion Dogra Regiment clearly demonstrates that petitioner No.1 was on duty. The witnesses produced by respondent No.3 during investigation deposed before the IO that three persons were assaulting respondent No.3 and on inquiry it was revealed to them that the petitioners were the persons who were assaulting respondent No.3, therefore, none of the alleged witnesses produced by the complainant has witnessed the occurrence and moreover none of the witnesses has disclosed the names of the persons indicating the roles played by each of the petitioners. Therefore, respondent No. 2 has also not considered the certificate issued by the Adjutant 20 Battalion Dogra Regiment dated 09.02.2015 and thus, respondent No. 2 has not conducted the investigation of the case fairly and submitted the charge-sheet.

6. The petitioners are aggrieved of the registration of the case under FIR No.38/2012 and thereafter filing of charge sheet against them which is pending in the Court of learned Chief Judicial Magistrate, Kathua. Petitioners have left with no option but to approach this Court to exercise its inherent powers and all other enabling provisions to quash the FIR and charge sheet impugned in this petition on the following grounds:-

"(a) That the complaint has been filed by respondent No. 3 on the instigation of Amit Kumar S/o Puran Chand whose father is in litigation with petitioner No. 1 over a land dispute in the court of learned CJM, Kathua who without following the law laid down by Supreme Court of India forwarded the same to SHO, Mahanpur who registered the FIR No. 16/12 and presented the charge sheet on 14.03.2016 after prescribed period of limitation.

(b) That the said complaint and charge-sheet has been filed only with a motive to harass and humiliate the petitioners which is evident from the contents of the complaint as well as the charge-sheet.

(c) That petitioner Nos. 1 and 2 being army personals were on their duty at Srinagar and Punjab respectively, they have been falsely involved in the case with the sole motto to pressurize their father to withdraw the case.

(d) That the perusal of the allegation made in the charge sheet and evidence collected during the investigation did not disclose the commission of offences under Sections 341, 323, 504 and 506 RPC therefore, it is travesty in law to

continue proceedings against petitioners, the respondent No. 2 despite repeated request by the petitioners did not carried out the investigation in a fair manner.

(e)That the illegal, arbitrary and malafides exercise of authority by respondent No. 2 culminated into filing of the charge sheet against the petitioners., even if the allegation are taken on their face value no offence is made out against the petitioners, thus proceedings pending before the court of learned Chief Judicial Magistrate, Kathua against the petitioners is required to be quashed."

7. I have considered the contentions of counsel for petitioners. Counsel for petitioners has relied upon 2004 Cr.LJ 3488 in case titled Lakpa Sherpa v State of Sikkim.

8. From bare perusal of record, it is evident that complainant Ashok Kumar filed a written complaint before CJM Kathua against accused persons namely Hans Raj S/o Santu (2) Lalit Kumar @ Lucky S/o Hans Raj (3) Ajeet Kumar @ Chhotu S/o Hans Raj, all R/o village Parnala, Tehsil Billawar stating therein; (1) that the accused No. 1 and 2 and wife of accused No. 1 namely Maya Devi on 27.01.2012 at about 10/11 a.m. at Parnalla waylaid one Amit Kumar S/o Sh. Puran Chand resident of village Parnalla, Teh. Billawar, assaulted said Amit Kumar and the said incident/occurrence was witnessed by the complainant and that regarding this incident, FIR No.08/2012 under Sections 341, 323, 506 RPC was registered with Police Station, Billawar and the complainant is a prosecution witness in that FIR/ case. (2) That because of this reason, that the complainant is a prosecution witness in the aforesaid FIR against the accused Nos.1 and 2 and W/o ACCUSED No.1 Maya Devi, all the accused (the accused No.2 & 3 are Army personnel), started pressurizing the complainant not to dispose against them as a prosecution witness and further started extending murderous threats to him (complainant) saying that in case the complainant dares to depose against them he would be murdered. (3) That with this backdrop, all the accused after forming unlawful assembly, with common criminal intention and object to commit heinous offence, on 01.06.2012 at about 7/7:15 P.M. when the complainant who is a mason, and after doing mason work, was returning to his home and when reached on the bridge in between Mahanpur and Dhamlar, waylaid the complainant, started hurling filthy abuses to the complainant and also started assaulting him with fists and blows, upon which the complainant raised hue and cry, which attracted certain persons to the spot, who were coming from Dhamlar towards Mahanpur on their motorcycle, with intervention of whom the complainant was rescued from the clutches of the accused, who (accused) thereafter left the place of occurrence, however while leaving they again held out murderous threat to the complainant that he would be murdered by running over bullet motorcycle over the complainant. (4) That the accused in the facts and circumstances, have committed offences under Sections 341, 323, 504, 506(ii), 34 RPC and are required to be dealt with under law and punished accordingly."

9. Learned CJM forwarded the same to concerned police to investigate the same under Law; accordingly on 03.06.2012 FIR No. 38/2012 was registered which

culminated into filing of charge sheet under section 341/323/504/506 RPC. It is worthwhile to mention here that accused never appeared during investigation nor obtained any bail order from any court. The challan was produced by police on 14.03.2016 with prayer to JMIC for issuing warrant under section 512 Cr.P.C. Court accordingly issued general warrant of arrest u/s 512 Cr.P.C against all the accused on 14.03.2016. Thereafter on 18.05.2016 accused no.1 appeared; interim order dated 30.6.2016 would further reveal that all accused appeared through counsel and filed one application under section 538-B Cr.P.C for dropping the proceeding; the court directed the State to file objections; thereafter accused Nos.2 & 3 never appeared and on 12.09.2016 an application for exemption of accused Nos.2 and 3 was dismissed by court below. On 26.12.2016, JMIC made a reference to Pr. Sessions Judge, Kathua for transferring the matter to any other court on the ground that said officer has conducted trial in challan in FIR No.08/2012 in which respondent No.3 was complainant and challan was dismissed; Principal Sessions Judge Kathua then transferred the case to CJM Kathua after accepting the reference on 09.01.2017; thereafter proceeding commenced before CJM Kathua and case was fixed for argument on application of accused filed under section 538-B Cr.P.C for dropping the proceeding; order dated 13.12.2017 would reveal that part arguments were heard. Meanwhile accused filed present petition and obtained stay of proceeding pending before trial court on 16.02.2018 from this Court.

10. I have given my thoughtful consideration to whole aspects of the matter and gone through the law on the subject.

11. CHAPTER-XLV-A of Cr.P.C deals with limitation for taking cognizance of certain offences. Its section 538-B reads as under:-

"538-B. Bar to taking cognizance after lapse of the period of limitation.- (I) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year ;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

12. From bare perusal of this section, it is evident that court cannot take cognizance of offence after the expiry of period prescribed under this section; for offence which is punishable with fine only the period for taking cognizance by the court is six months; it is one year, if the offence is punishable with imprisonment for a term not exceeding one year; it is three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

13. Section 538-C reads as under:-

"538-C. Commencement of the period of limitation.- (I) The period of limitation, in relation of an offender, shall commence,

(a) on the date of the offence ; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the Knowledge of such person or to any police officer, whichever is earlier ; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

14. From bare perusal of this provision, it is evident that it provides the reckoning of period of limitation.

15. Section 538-D reads as under:-

"538-D. Exclusion of time in certain cases.- (I) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution, in respect of an offence has been stayed by an injunction or order, in computing the period of limitation the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation; the period of such notice or as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other, authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government ; or

(b) has avoided arrest by absconding or concealing himself, shall be excluded. "

16. In terms of this section, sub-clause (4)(b) Cr.P.C, it is evident that period for which offender has avoided the arrest or concealed himself, has to be excluded while calculating the period of limitation.

17. In present case, admittedly the challan against the petitioners /accused is under section 341/323/504/506 RPC which carries punishment upto 1 year (341 RPC), 1 year (323 RPC) , 2 years (504 RPC) and 2 years (506 RPC); date of occurrence is 01.06.2012 and challan has been produced on 14.03.2016 after expiry of period of limitation as provided in section 538-B. But it is also a fact that all the accused were not arrested as they avoided the arrest by concealing themselves from the date of occurrence till challan was produced. In view of section 538-D of Cr.PC, this period has to be excluded. The petitioners cannot take advantage of their own wrongs. Another argument taken that complainant had not approached the concerned police under section 154 Cr.P.C, prior to filing of complaint before Magistrate, is also not tenable at this stage, because that stage is over as challan has already been filed.

18. In view of above, this petition is dismissed. Interim stay is vacated.