

(2018) 12 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 82 Of 2015, IA No. 97 Of 2015

**Mandhi And Ors @APPELLANT@Hash @APPELLANT@Hash State Of
Jammu & Kashmir And Ors**

Date of Decision : 21-12-2018

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 323, 382, 447
Code Of Criminal Procedure, 1973 — Section 107, 151, 154, 156, 156(3), 173

Citation : (2018) 12 J&K CK 0053

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Rahil Raja, C. M. Koul

Final Decision : Dismissed

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 quashing of FIR No.40 of 2009 registered with police Station Gharota for commission of offences under Section 447/382/147/323 RPC as also consequential proceedings i.e. the final report/challan pending before the Court of learned Special Excise Magistrate (JMIC) Jammu in File No. 143 A/Challan titled State vs. Mandi and others.

2. In the petition, it has been stated that the forefathers of the petitioner No.1 were in physical possession of a big chunk of land falling in Khasra No.4286, 4287, 4288 and 4289 situated at village Bhalwal, Tehsil and District Jammu and after the death of his forefathers, the said land devolved upon the petitioner No.I and as on date the same is jointly possessed and cultivated by the petitioner No. 1 along with his sons i.e. petitioner Nos.2 and 3. The entries in respect of possession of the petitioners over the above said land have also been made by the revenue authorities in the revenue record pertaining to the said land. It is stated that on 31.07.2009, respondent No.3 along with three other persons namely, Sh. Nisar S/o Mohd. Shafi, Mohd. Khan alias Mand S/o Ibrahim and Rashid s/o Ghulam Nabi, all residents of Bhalwal, Tehsil and District Jammu

acting on the instigation of one Mohd. Sadiq S/o Mohd. Khan R/o Village Bhalwal Dhar Dhalochan, Tehsil and District Jammu made an attempt to damage bajra crops standing on the land of the petitioner No.1. However, due to timely intervention of respectable persons of the locality, the crops of the petitioner No.1 were saved. Later, however, on the same day respondent No.3 along with 03-04 police personnel of Police Station, Gharota in civil dress and above named Nisar S/o Mohd. Shafi came to the house of the petitioner No. 1 in a police vehicle, where after they trespassed into the house of the petitioner No. 1, searched the entire house, used filthy and un-parliamentary language, harassed and humiliated the petitioner No.1 and other family members, damaged Black and White Television of petitioner No.1 and while leaving the house, threatened the petitioner No.1 that they will kill him if he refused to surrender the aforementioned land in favour of above named Mohd. Sadiq S/o Mohd. Khan. It is stated that the said Mohd. Sadiq S/o Mohd. Khan, is working as an orderly in the J&K Legislative Assembly and at the relevant point of time was also working at the residence of Sh. Tara Chand, Ex. Deputy Chief Minister of the State of Jammu and Kashmir, is a very headstrong person and has been wanting to grab the 70 kanals of land of the petitioner No.1 falling under Khasra No.4286. It is further stated that after the said incident, the petitioner No.1, with a view to apprise the Hon'ble Ex. Deputy Chief Minister of the misdeeds of his orderly as also to approach the Hon'ble Chief Minister of the State in this regard, left for Srinagar on the same day and taking advantage of the absence of the petitioner No.1, the above named persons with the active aid and assistance of the authorities of Police Station, Gharota and some headstrong persons of the area trespassed into the land of the petitioner No.1 and completely damaged the standing bajra crop over 13 kanals of land falling under above said Khasra No.4286.

It is stated that petitioner No.1, after coming to know the said incident by his family members over telephone, moved a written complaint against the above named persons before the Hon'ble Chief Minister at Srinagar where after the PRO to Advisor to the Hon'ble Chief Minister vide his Communication No:PS/Adv/HCM/09/62 dated 03.08.2009 forwarded the complaint of the petitioner No.1 to the Senior Superintendent of Police, Jammu for registration of formal FIR against the persons named therein and for investigation into the matter. Thereafter, the said communication dated 03.08.2009 was further forwarded by the Senior Superintendent of Police, Jammu to the Station House Officer, Police Station Gharota on 04.08.2009 for necessary action as per law and for submission of report in the matter.

3. It is contended that the petitioner No.1 tendered the above said communication dated 03.08.2009 along with his complaint to the Station House Officer, Police Station, Gharota, who declined to take any action in the matter and started using abusive and filthy language against the petitioner No.1. It is stated that while the petitioner No.1 was absent from Jammu during the above said period, his agricultural instruments/tools including a 'hal' and 'pathi' also got

stolen, regarding which, a written complaint was made by the petitioner No.1 on 05.08.2009 where after the Station House officer, Police Station Gharota asked the petitioner No.1 to handover both the complaints to the Head Constable, namely, Sh. Bashir Ahmed for necessary action. However, when the petitioner No.1 went to the above named Head Constable he demanded a bribe of Rs.5000/- for proceeding further in the matter and forced by the circumstances, petitioner No.1, who was having Rs.2000/-with him, paid the said amount to the above named Head Constable. Thereafter, when the police authorities at Police Station, Gharota failed to take any action with regard to the complaints made by the petitioner No.1, he consulted an Advocate in the matter, who advised the petitioner No.1 to file a complaint before the learned Chief Judicial Magistrate, Jammu. Petitioner No. 1, accordingly, did the same and the complaint made by the petitioner No.1 came to be forwarded by the learned Chief Judicial Magistrate, Jammu to I/c Police Station, Gharota in terms of Section 156(3) of Cr.P.C. under dispatch number: 1886/CJM dated 08.08.2009. It is further stated that when the petitioner No.1 went to the Police Station Gharota with the above said directions issued by the learned Chief Judicial Magistrate, Jammu on the same date i.e. 08.08.2009, the Munshi present in the Police Station refused to entertain the same on the ground that the Station House Officer Police Station Gharota was not available at that moment. Petitioner No.1, thereafter, on the next day i.e. 09.08.2009 once again went to the Police Station, Gharota alongwith the said complaint. The respondent No.2 instead of taking action under law on the complaint made by the petitioner No.1 became furious, slapped the petitioner No.1 on his face, kicked him with his legs and illegally confined the petitioner No.1 in the lockup for two nights and two days. Further the petitioner No.1 was also booked in a false FIR under section 107/151 Cr.P.C. However, when the petitioner No.1 was ultimately produced before the Executive Magistrate, the learned Magistrate after hearing the woeful tale of the petitioner No.1, let him free after obtaining an undertaking from the petitioner No.1. The petitioner No.1 having failed to evoke any lawful response from the police authorities had simultaneously approached the civil Court with a suit for permanent prohibitory injunction against the above named persons where under the learned Court of 1st Additional Munsiff, Jammu vide its order dated 08.08.2009 directed the parties to maintain status quo on spot. The above said suit has now been decreed by the learned court and the above named persons who were arrayed as defendants therein have been permanently restrained from interfering into the peaceful possession of the petitioner No.1 over the land measuring 314 kanals 06 marlas falling under Khasra Nos:4286, 4287, 4288 and 4289 situated at Bhalwal, Tehsil and District Jammu. On 20.08.2009 when the petitioner No.1 along with two of his relatives, was working on the above said land comprised in Khasra No.4286, respondent No.4 and 5 along with two other ladies, namely, Khurshid W/o Mohd. Khan and Mumtaj W/o Mohd. Shafi attacked the petitioner No.1 and his two relatives working with him in the field with stones, as a result of which, one of the relatives of the petitionerNo.1 namely Sadiq Ali S/o Hiyat Ali sustained grievous injury on his head upon being hit by

the wife of respondent No.3. After seeing the above said Sadiq Ali in a pool of blood all the ladies fled away from the scene of occurrence. The petitioner No.1 immediately took the above said Sadiq Ali to Government Medical College, Jammu, where he was treated. It is contended that while the petitioner No.1 had taken the above named injured Sadiq Ali to the hospital for his treatment, the respondents No.2 to 4 in order to save their skin and to shield the above named ladies who had attacked the petitioner No.1 and his relatives, lodged another false and frivolous complaint with Police Station Gharota whereupon FIR No.40 of 2009 came to be registered against the petitioners. Even the father of the injured Sadiq Ali i.e. petitioner No. 5 was not spared and was implicated in the FIR and was, further kept in confinement for more than a week, as none of the petitioners except petitioner No.1 were present on spot when the incident in question happened on 20.08.2009 and the sons and other relatives i.e. petitioners Nos. 2 to 6 have been falsely implicated only to harass the petitioner No. 1 and to surrender his land to Mohd. Sadiq S/o Mahd Khan. Thereafter, the petitioner No.1 approached various superior police authorities including the Senior Superintendent of Police, Jammu projecting the harassment meted out to him and his family members, but nothing substantial was done in the matter. It is stated that having left with no other alternative, the petitioner No.1 approached the Hon'ble Chief Justice of the Hon'ble High Court of Jammu and Kashmir by way of a written complaint narrating the entire incident and requesting for strict action against the erring and corrupt police officials. The matter was taken up by the Principal Secretary to the Hon'ble Chief Justice of the High Court of Jammu and Kashmir with the Senior Superintendent of Police, Jammu, and an inquiry into the matter was conducted by the Senior Superintendent of Police, Jammu and a report submitted to the worthy Principal Secretary under No1877/DFOJ dated 15.01.2010 inter alia reporting that both the parties have levelled allegations of trespass over the land falling in Khasra No.4286 and assaulted each other on 20.08.2009 and that one person of Mandhi party was injured and brought to Government Medical College, Jammu without informing the Police Station, Gharota, whereas, the other party reported the matter to Police Station, Gharota, on which, an FIR No.40 of 2009 came to be registered. It was also categorically mentioned in the above said report dated 15.01.2010 that no cognizance was taken by the then Station House Officer, Police Station, Gharota, namely, Sub Inspector Zamrud Hussain on the complaint of petitioner No.1 regarding the trespass on the land and damage to the crops even after the direction of the learned Chief Judicial Magistrate, Jammu, dated 08.08.2009. It was also reported that the inquiry has revealed the acceptance of Rs. 2000/- as bribe from the petitioner No.1 by the I/c HC Mohd. Bashir and that the inquiry against the above named police officials has been ordered for their said Act, which amounts to grave service mis-conduet, indiscipline and misuse of their official position. It was also reiterated that the impugned FIR No.40 of 2009 has been ordered to be re-investigated by the Dy. Superintendent of Police, SDPO Domana.

4. It is further stated that the petitioner No.1 thereafter hoped that the investigation would be conducted in a fair and impartial manner so that the true facts could come to light, however, against all odds the challan has been produced in the impugned FIR No.40 of 2009 against the petitioners for commission of offences under Sections 147/323 RPC before the court of learned Special Excise Magistrate and the matter is now pending at the stage of framing of charges.

5. The petitioners are aggrieved of registration of FIR No.40 of 2009 registered with police Station Gharota for commission of offences under Section 447/382/147/323 RPC as also consequential proceedings i.e. the final report/challan pending before the Court of learned Special Excise Magistrate (JMJC) Jammu in File No. 143 A/Challan titled State vs. Mandi and others, and challenge the same on the following grounds:-

That the FIR No. 40 of 2009 and the consequent challan produced before the court of the learned Chief Judicial Magistrate, Jammu which has been transferred to the Court of learned Special Excise Magistrate cannot be sustained, as would be clear from the sequences of events the enquiry conducted in the matter pursuant to the communication dated 15.01.2010 of the worthy Principal Secretary to Hon'ble Chief Justice, no action was taken by the police authorities on the complaint made by the petitioner No. 1; that it has come out during the enquiry that one person of the petitioner's side was injured on 20.08.2009 and was treated at GMC, Jammu and MLC in this regard was also prepared ; that it has also come out during the enquiry that bribe was taken from the petitioner No. 1 by the aforesaid Head Constable; that an FIR came to be immediately registered against the petitioners at the instance of respondents Nos. 2 to 4 who in order to save their skin approached the Police Station first whereas the petitioner No. 1 had taken Sadiq Ali for treatment, but no action was taken by the Police authorities; that apart from injury of the said Sadiq Ali there are two eye witnesses whose statements have not been recorded by respondent No.1; that the impugned FIR and consequent proceedings thereon has been used as a tool by the respondents Nos. 3 to 5 and the above named Mohd. Sadiq S/o Mohd. Khan as a tool to pressurize the petitioner No. 1 to part with his land with the active aid and assistance of the respondents Nos. 1 and 2 who are hand in glove with the respondents Nos. 3 to 5; that even the FIR was not registered on the complaint of the petitioner No.2 by the learned Chief Judicial Magistrate, Jammu and the entire investigation has been conducted at the back of the petitioners and even the challan was presented in the absence of the petitioners.

6. I have considered the contentions of counsel for petitioners, who has reiterated all grounds taken in the instant petition.

7. The brief facts narrated in the challan are that on 20.08.2009 Younis Ali resident of Bhalwal Dhar Dhalochan along with his wife Mst. Arshan Bibi, Mst. Salamat Bibi w/o Rashid Ali filed a written complaint in the Police Station Gharota that he is resident of Bhalwal Dhar Dhalochan and he is having some land in

Bhalwal Dhar; that he and his sons cultivate Bajra in the said land; that in the afternoon he came to know that accused-Mandhi has caused damages to the crops of the complainant; that accused Bitu, Bashir Ahmed s/o Mandhi, Amban, Munna, Guddu s/o Hakam Din r/o Kangar Morh, came on spot and attacked him, he raised hue and cry. In the meantime, Arshan Bibi- his wife and Mst. Salamat Bibi w/o his brother came on spot for rescuing him; the accused persons also attacked on them and took the gold ear rings of his wife. On his application an FIR No 40/2009 for commission of offences under Sections 147/323/447/382 RPC came to be registered and case was handed over to Head Constable Mohd. Bashir. Investigation Officer during the course of investigation filled the injury form and sent the injured to the hospital for treatment. After completing the investigation it was found that accused persons with criminal intention entered into the land of the complainant and damaged the crops of Bajra. Police after completing the investigation has produced the challan against Mandhi S/o Shail Din, Halam Hussain alias Bittu, Manir Hussain, sons of Mandhi, Amin Mohd., Hiyat Ali and Peer Mohd.

8. From bare perusal of grounds and other facts mentioned in the petition, it is evident that petitioners except asserting his grievance with regard to non registration of FIR, have nowhere mentioned as to how, police was not competent to investigate the FIR impugned and how the JMIC, where challan is pending, lacks jurisdiction to deal with the challan. Once a FIR in cognizable offence is registered in police station in terms of section 154 of Cr.P.C., then it is statutory duty of police to investigate the case in terms of section 156 Cr.P.C. This statutory duty of police cannot be curtailed by Court because police has power to file closure report or final report thereby showing the offences which as per their investigation are made out against the accused in terms of section 173 Cr.P.C.

9. Law with regard to quashing of FIR/complaint is well settled. FIR/complaint can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expressions 'ends of justice' and 'to prevent abuse of process of any court' are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C., does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate prosecution.

10. Further this court cannot appreciate the facts narrated in petition and cannot give finding that no offence is made out; it is only the prerogative of trial court, where challan is pending.

11. In view of the above, this petition is dismissed as not maintainable along with connected IA(s). Stay, if any, is vacated.