

(2020) 10 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 152 Of 2018

Mohammad Salim Pandith

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561(A)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 153(A), 379, 411,
502(1)(b), 505, 505(1)(b), 505(2)
Code Of Criminal Procedure, 1973 — Section 161, 482
Representation Of The People Act, 1951 — Section 135, 136
Constitution Of India, 1950 — Article 19(1), 19(1)(a), 19(2)

Citation : (2020) 10 J&K CK 0016

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Salih Pirzada, B. A. Dar

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Petitioner has filed the instant petition under Section 561-A of the Jammu and Kashmir Criminal Procedure Code seeking quashment of FIR No.26/2018 registered by Police Station, Kothibagh Srinagar, for offence under Section 505(1) (b) RPC.

2) It appears from the record that associations of some travel agents had lodged a complaint with SHO, P/S Kothibagh, Srinagar, alleging therein that on 03.04.2018 petitioner had published a news item in daily Times of India titled "Stone pelters in J&K now target tourists, four women injured". As per the complaint, the news item is based on false information and malicious intention with a view to disrupt peaceful tourist season and to create an atmosphere of threat amongst citizens of the Country. The complainant went on to allege that the incident reported in the news item had, in fact, not taken place at all. On the

basis of this complaint, FIR No.26/2018 for offence under Section 505(1)(b) of RPC was registered with Police Station, Kothibagh, Srinagar.

3) It is contended in the petition that though the incident of stone pelting on tourists was denied by Police Media Centre but it has, in its media briefing, admitted that two tourists got minor injuries on 1st April when the vehicles in which they were travelling came in the middle of an area where stone pelting was going on. It is further contended that the allegations made in the complaint do not make out any offence against the petitioner and, therefore, the FIR is liable to be quashed. The petitioner has also contended that he is a renowned and reputed news reporter of a premier and prestigious newspaper of the Country and he had under a bona fide belief and in good faith reported the incident of stone pelting on tourists, which incident has also been acknowledged by the police, therefore, registration of FIR against him amounts to abuse of power and an attempt to gag freedom of speech and expression of the petitioner.

4) Respondents have filed their response/status report in which they have contended that the FIR was registered on the basis of a report lodged by one Ashfaq Sidiq S/o Gh. Mohammad R/o 2nd Cross Road behind Hotel Park Boulevard Road, Srinagar, and during investigation of the case, the newspapers (Times of India) dated 03.04.2018 and 04.04.2018 were seized and statements of witnesses under Section 161 of Cr. P. C were recorded. According to the respondents, offence under Section 505 (1)(b) RPC stands established against the petitioner.

5) During the pendency of the petition, an affidavit dated 21st September, 2020, came to be filed by the complainant Ashfaq Sidiq wherein he has submitted that he has entered into an understanding with the petitioner and that he is no more interested in pursuing the case against the petitioner.

6) I have heard the learned counsel for the parties and perused the record of the case.

7) It is the contention of the petitioner that the contents of the FIR taken at their face value do not fulfill the ingredients of an offence under Section 505(1)(b) of RPC and, as such, the FIR is liable to be quashed. In order to test merits of this argument, the provisions contained in Section 505(1)(b) of RPC are required to be noticed. The same read as under:

"505. Statement conducting to public mischief.-(1) Whoever makes, publishes or circulates any statement, rumour or report, -

(a) xxx xxx xxx

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;

(c) xxx xxx xxx

shall be punished with imprisonment which shall not be less than three years but may extend to ten years and shall also be liable to fine.

(2) xxx xxx xxx

(3) xxx xxx xxx

Exception -It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid."

8) Clause (b) quoted above, on which prosecution basis itself, is in two parts. The first part of the clause deals with a situation where an accused person makes, publishes or circulates any statement, rumour or report with intent to cause, fear or alarm to the public or any section of the public whereas the second part of that clause is confined to making, publishing or circulating any statement, rumour or report which is likely to cause fear or alarm to the public or any section of the public. In both the situations, the fear or alarm must induce a person to commit an offence against the State or against public tranquility

9) As per Oxford's Dictionary, word "induce" means succeed in persuading or leading (someone) to do something. Similarly, Black's Law Dictionary defines "inducement" as the act or process of enticing or persuading another person to take a certain course of action. Thus, making, publishing or circulating a statement or rumour with intent to create a fear or alarm to the public must persuade any person to commit an offence against the State. Mere making or publishing of a statement or rumour creating fear or alarm in the absence of inducement of a member of public to commit an offence against the State would not satisfy the ingredients of offence under Section 502(1)(b) of RPC.

10) The aforesaid provision of the Penal Code further contains an exception to the effect that there will be no offence within the meaning of Section 505 RPC when a person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such criminal intent which may fall within the ambit of Section 505 RPC.

11) The Supreme Court in the case of Bilal Ahmad Kaloo Vs. State of Andhra Pradesh, 1997(3) Crimes 130 (SC), while relying upon the judgment in Balwant Singh & anr. Vs. State of Punjab, (1995) 3 SCC 214, held that mens rea is a necessary postulate for the offence under Section 505 IPC as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in clause (c) of sub-section (1). The Court further went on to hold that a person who had not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153A or under Section 505(2) of IPC.

12) In *Kali Charan Mohapatra v. Srinivas Sahu*, AIR 1960 Orissa 65, the High Court of Orissa, observed that Section 505 IPC has to be read along with the provisions contained in Article 19(1) and (2) of the Constitution of India which guarantees to the citizen his right of freedom of speech and expression and bearing in mind the principle that Section 505 IPC deals with subject of liberty, it must be construed very strictly in favour of the defence. The Court further went on to hold that unless the contents of a publication amount to incitement to an offence, the person who has published and circulated the same, cannot be held guilty under Section 505 IPC.

13) Adverting to the facts of the present case, an FIR came to be registered on the basis of a complaint that the petitioner had published a false incident in the newspaper "The Times of India" dated 03.04.2018, whereby it was reported that a tourist vehicle had been stoned in Kashmir Valley resulting in injury to two tourists. It will be profitable to reproduce the news report in question:

"Stone-pelters attack tourists in J&K, 4 hurt.

Srinagar: A day after 20 people, including four civilians, were killed in anti-terror operations in south Kashmir, many panic-stricken tourists fled Srinagar on Monday, even as the valley observed a complete shutdown called by the separatists.

Most of the tourists reached the airport early in the morning to escape attacks by stone-pelters who had targeted tourists in three places on Sunday night.

Late Sunday night, two buses carrying tourists from Indonesia were pelted with stones near Dal Lake. Prompt action by houseboat owners saved them. Two women tourists from Abu Dhabi suffered head injuries after being hit by stones thrown at their cab near the airport on Sunday night. They were hospitalized. A mob attacked a tourist bus at Awantipora in South Kashmir's Pulwama district and threw stones at it, injuring two women from UP.

The attack took place on the Jammu-Srinagar national highway around 9 pm when more than 100 men pelted stones at the bus, which was taking tourists on a city tour. The two injured were taken to Sri Maharaja Hari Singh Hospital in Srinagar. "The two injured women were discharged after being given first-aid", a senior government official said".

14) After publication of aforesaid news report, on 4th of April, 2014 another news report was published in "The Times of India" prepared by the petitioner. It reads as under:

"Another tourist vehicle stoned in Valley, 2 hurt.

Srinagar: A day after TOI reported that tourists had been attacked by stone pelters in Kashmir on Sunday another tourist bus (no. UT17A5505) of Sehgal Tours, carrying 42 tourists from Mandya district, Karnataka, was attacked in Kangan (Ganderbal district) on Tuesday.

Driver Ramesh told TOI that the bus was on its way from Sonmarg to Srinagar. Two tourists suffered injuries from the shards of the glass windows that were smashed by stone pelters (pictures with accompanying report on P11).

Meanwhile, the J&K Police denied that any tourists had been attacked on Sunday, but acknowledged that 'two tourists got minor injuries on April 1 because the vehicles came in the middle of an area where pelting was going on.

Awantipora SP Zahid Ahmad also confirmed that a vehicle in which tourists were travelling was attacked by stone pelters on Sunday, but said incident took place near Khanabal in Anantnag not in Awantipora police district.

In another incident, two women suffered head injuries when their cab was hit by stones at Humhama on the airport road, on Sunday".

15) Both the afore-quoted news items have been seized by the respondents during investigation of the case and the same form part of the record of investigation. The FIR, which is subject matter of instant petition, has, however, been registered on the basis of report published in the newspaper "Times of India" on 3rd of April, 2018. A perusal of the complaint shows that the complainant has felt aggrieved of the portion of the news item wherein it has been reported that tourists have come under attack from stone pelters. According to the complainant, this part of the report is fake and it has resulted in an atmosphere of threat amongst the citizens of the Country.

16) As already noted, unless a publication has been made with an intention to cause fear or alarm whereby a person is induced to commit an offence against the State, the offence under Section 505(1)(b) of RPC is not made out. In the instant case, the complaint does not disclose the particulars of any such person who has been induced to commit an offence against the State because of the publication of the news report in question. In fact, it is not even alleged that anybody has been induced by the news report in question to commit an offence against the State. The contents of FIR, which is based upon the complaint filed by some Association of Travel Agents, are absolutely vague and devoid of any particulars in this regard. Merely because a report allegedly threatens to disrupt the tourist season does not bring its publication within the four corners of the offence as defined under Section 505(1)(b) RPC. As already stated, publication of a report creating fear or alarm in the absence of inducement of a member of public to commit an offence against the State would not satisfy the ingredients of offence under Section 505(1)(b) of RPC. There is no allegation in the complaint or FIR that any member of the public has, as a result of publication of the report of petitioner, been persuaded or lead to do something which is an offence against the State.

17) The question that arises is whether a fearless and frank reporting of events/incidents in a newspaper would merely for the reason that the persons engaged in a particular business feel that their business would get adversely impacted by such news reports, attract Section 505 of Ranbir Panel Code. The answer to this

question has to be in negative because reporting of events which a journalist has bona fide reason to believe to be true, can never be an offence. Taking a contrary view would be violative of the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Fair and frank reporting of events by electronic and print media cannot be curbed merely because it may have an adverse impact on business of some class of persons. The freedom of speech and expression, which includes within its ambit freedom of the press, is subject only to reasonable restrictions imposed by law for specific purpose.

18) In the above context, it will be apt to refer to the judgment of Andhra Pradesh High Court in the case of A. B. K Prasad v. State of Andhra Pradesh and others, AIR 1997 AP 357. It was a case where an Editor of newspaper was booked by police for offences under Section 379, 505 and 411 of IPC and Section 135 and 136 of the Representation of the People Act, 1961, on the basis of a news report whereby he had reported about the rigging at a polling station in the course of the election. The Court, while quashing the proceedings against the Editor of the newspaper, observed as under:

"14. The people of India while constituting sovereign socialist democratic republic have solemnly affirmed that liberty of thought, expression, belief, faith and worship shall be secured to all the citizens of India and guaranteed under Article 19(1)(a) of the Constitution of India for all citizens the right to freedom of speech and expression. Freedom of the press is not expressly mentioned in Article 19, but has been held by the Courts and by now is well recognised that it flows from the general freedom of speech and expression guaranteed to all citizens of India. This freedom includes not merely the freedom to write and publish what the writer considers proper, subject to reasonable restrictions imposed by law for specific purpose, but also the freedom to carry on the business so that information may be disseminated and excessive and prohibitive burden restricting circulation may be avoided. Reasonable restrictions are referable to Clause (2) of Article 19, which reads as follows:

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

Respondents appeared to know that as a press person and as a citizen of India, Krishna Mohan as well as the petitioner enjoy the freedom of speech and expression and unless it is shown to have violated any existing law, it would be difficult to restrict publication of the news with respect to the elections, particularly when a vigilant press is expected to watch whether there is any unfair practice resorted to by any of the political parties or contesting candidates. Reference to Section 505 of the Indian Penal Code in the First Information Report

as one of the charges against Krishna Mohan, it seems, is made only to bring the publication of the news item about rigging at one of the polling stations in the elections within the purview of an existing law which prohibits publication in respect of the matters enumerated therein".

19) The Court further went on to observe as under:

"Whenever occasions have come, the Courts have recognised the importance of independence which police and the executive must enjoy from any interference, including interference by Courts and emphasized over and over again that the Court should not interfere with the investigation of case. When, however. Courts have chosen to emphasise that police must have complete freedom in the matter of investigation of cases, it has never bargained that it shall allow them to go burser and do things which instead of upholding the rule of law will undermine or destroy it. Independence of police which is a wing of the executive of the State cannot be over-stated and extended to leave to them the freedom to decide when to register case, when to investigate, whom to arrest and whom not to arrest. Their independence must always be viewed within the limitations imposed upon their functioning by the laws and no law, to our knowledge, gives such freedom to the police that it would decide to register a case against a journalist, who, in discharge of his duties, could come to know certain incidents. which he thought in public interest, should be published and accordingly reported and finally got published in the newspaper. We cannot in spite of constraints resist recording our disapproval to the arrest of Krishna Mohan by the respondents for the alleged offences which never existed and for reasons which we have already noticed smack of malice..."

20) From the afore-quoted observations of the Division Bench of the Andhra Pradesh High Court, it becomes clear that freedom of the press cannot be put in peril on the basis of the grounds which are unknown to law. The limitations on freedom of the press cannot extend to registration of a criminal case against a reporter, who in discharge of his duties and on the basis of information gathered by him, makes a report about certain incidents which he thought in public interest should be published. It is immaterial that said report may have adversely affected the business of some person(s) as long as the reporter had reasonable grounds to believe that his report is true. The police in such type of cases, cannot be allowed to hound the journalists by misusing its powers.

21) Even otherwise, the report dated 4th of April, 2018, bears reference to denial of the incident of attack on tourists by the Jammu and Kashmir Police and at the same time it also reports that the police has acknowledged that two tourists got minor injuries because their vehicle came in the middle of an area where stone pelting was going on. The report further refers to the information given by one driver Ramesh and Awantipora SP Zahid Ahmad. These reports form part of the record seized during the investigation. These documents go on to show that the news published by the petitioner was not without any basis. It may or may not have been wholly correct but the petitioner had relied upon the information of a

driver and a police officer while formulating the news report.

22) The Exception to Section 505 makes it very clear that an offence under said Section is not made out if the person making, publishing or circulating the report has reasonable grounds for believing that such report is true and publishes the said report in good faith. The documents referred to above, which are part of the record of investigation, clearly go on to show that the petitioner had reasonable grounds for believing that the news report, which he had published, is based on true facts.

23) In the light of the foregoing discussion of the factual and legal aspects of the instant case, it can safely be stated that the contents of FIR and the news report published by the petitioner do not disclose the commission of offence under Section 505(1)(b) RPC against the petitioner.

24) The Supreme Court in the case of State of Haryana vs. Ch. Bhajan Lal, 1992 SCC Supl. (1) 335, has categorized the cases by way of illustration wherein inherent powers under Section 482 Cr. P .C can be exercised by the High Court either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The same are given as under:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.

25) The case at hand, as discussed hereinbefore, falls in category (a) quoted above because the allegations made in the First Information Report and 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 petitioner. Thus, continuance of investigation in the subject FIR would amount to abuse of process of law.

26) Even otherwise, during the pendency of this petition, the complainant has entered into a compromise with the petitioner and he is not interested in continuing the prosecution against the petitioner. He has filed an affidavit to this effect before this Court. Therefore, if the investigation of the FIR is permitted to continue in the absence of statement of the complainant in support of the allegations made by him in the complaint, it would be like flogging a dead horse and no fruitful purpose will be served by continuing investigation of the case.

27) For the foregoing reasons, the present case is fit one where this Court should exercise its inherent powers under Section 561-A of the Jammu and Kashmir Code of Criminal Procedure, which is in paramateria with Section 482 of the Central Code of Criminal Procedure, to quash the FIR. Accordingly, the petition is allowed and the impugned FIR bearing No.26/2018 of Police Station, Kothi Bagh, Srinagar, is quashed.