

(2020) 02 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases No. 301 Of 2018, IA No. 2 Of 2018

Mohd Altaf And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482, 561(A)

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 498(A)

Citation : (2020) 02 J&K CK 0065

Hon'ble Judges : Ali Mohammad Magrey,J

Bench : Single Bench

Advocate : A. M. Malik, Rahil Raja

Final Decision : Dismissed

Judgement

1. This petition under Section 561-A Cr. P. C, has been filed by the petitioners seeking quashment of FIR No. 06/2018 under Sections, 498-A/109

RPC registered with Police Station, Women Rajouri and all consequential proceedings.

2. There is no appearance on behalf the petitioners. The same is case on the previous date of hearing.

3. Needless to mention here that in terms of order passed on 22nd May, 2019, this Court while vacating the interim order dated 07.09.2018, has given

liberty to the Police to submit the final report before the competent Court of law.

4. Otherwise also, there is no merit in this matter qua the prayer made for quashment of FIR No. 06/2018 dated 09.05.2018, registered with Police

Station, Women, Rajouri by respondent No. 5

4. Since the quashment of FIR pending before Police Station, Women, Rajouri is concerned, it is profitable that before going to merits of the case, the

question is as to whether the FIR pending before a Police Station can be quashed under section 561-A Cr.P.C proceedings filed in this Court. The

answer has to be in the negative, for, the remedy under Section 561-A Cr. P. C can be invoked/pressed into service only in the following

circumstances:

â??(i) to pass orders in order to give effect to an order passed under Cr.P.C

(ii) to prevent abuse of process of Court

(iii) to secure the ends of justice: and

(iv) to prevent mis-carriage of justice.â??

5. Apex Court also held that power is to be exercised cautiously, carefully and sparingly and Court has not to function as a Court of appeal or revision.

It has also laid down the parameters and guidelines in cases titled as â??K.L.E Society & ors v. Siddalingesh reported in 2008 AIR SCW 199;3 A.P

Vs Bojjoori Kanthaiah reported as 2008 AIR SCW 7860 and Reshma Bano Vs State of Uttar Pradesh reported in 2008 AIR SCW 1998â??.

6. Apex Court in AIR 2004 SC 3967, AIR 1972 SC 484, AIR 1974 SC 1446, AIR 1977 SC 2229, AIR 1989 SC 01, has laid down the same principle.

It is apt to reproduce para 10, 13, 14, 15, 17 & 19 out of the judgment titled as Som Mittal Vs Govt. of Karnataka reported in 2008 AIR SCW 1003

herein:

â??10. In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of

the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly with circumspection and in

rarest of rare cases. Exercise of inherent power under section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The

exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to

proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would

likely to be ended in acquittal. In other words, the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by

the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

13. In *State of Bihar v. J.A.C Saldanha* (1980) 1 SCC 554 this Court pointed out at SCC P. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts

taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in

giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

14. In *Hazari Lal Gupta v Rameshwar Prasad* (1972) 1 SCC 452 this Court at SCC P. 455 pointed out:

In exercising jurisdiction under section 482 of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if

there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is

reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal

Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of

statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

15. In *Jehan Singh vs Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under section 561-A of the old Code for quashing

the investigation was dismissed as being premature and incompetent on the finding that prima facie the allegations in the FIR if assumed to be correct,

constitute a cognizable offence.

17. In *State of Bihar vs Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised

sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry

whether the allegations in the complaint are likely to be established by evidence or not.

19. We may observe here that despite this Court consistently held in catena of decisions that inherent power of the High Court should not be exercised

according to whims and caprice and it has to be exercised sparingly with circumspection and in the rarest of rare cases, we often come across the

High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at

naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent

power of Section 482 is in the Statute Book, exercise of such power is not impressible but it must be noted that such power has to be exercised

sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is

not intended to scuttle justice at the threshold.â??

7. The Apex Court in case titled State of Madhya Pradesh v. Laximi Narayan and ors , reported at AIR 2019 Supreme Court 1296, also held as under:

â??â?|.while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect to non-compoundable offences, which

are private in nature and do not have a serious impact on society, on the ground that there is a settlement /compromise between the victim and the

offender, the High Court is required to consider the antecedents of the accused, the conduct of the accused, namely, whether the accused was

absconding and why he was absconding, how he had managed with the complainant to enter into a compromise.â??

8. Keeping in view the scope of section 561-A Cr.PC, the Court should refrain from making prima facie decision at interlocutory stage when entire

facts of the case are incomplete, hazy and more so, when material evidence is yet to be collected and issues involved could not be seen in their true

perspective.

9. In view of the facts and circumstances and law quoted herein above, this petition has no merit, therefore, dismissed along with connected IA.,